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The Small Business Adviser

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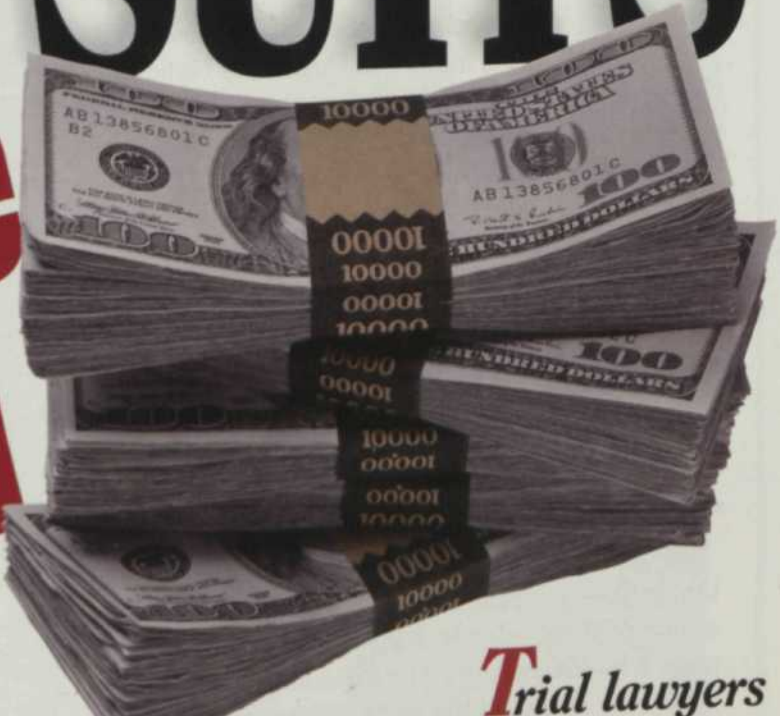

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All honorees will be profiled in "Insights and Inspiration: How Businesses Succeed," a softcover book published by Nation's Business and a videotape series produced from features about honorees on First Business, a nationally syndicated weekday television program.

The Blue Chip Enterprise Initiative® is open to any U.S. or Puerto Rican for-profit company that has operated continuously for at least three years and employs 5 to 400 persons. For more information, or to place your name on the list to receive a 1999 application, send an e-mail to bluechip@nationsbusiness.org or call 1-800-FOR-BCEI.

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THE SPIRIT OF ENTERPRISE · U.S. CHAMBER OF COMMERCE

Nation'sBusiness VOL. 86, NO. 2

PHOTO: ©DOUG WILSON—BLACK STAR

A suit *against Terry Deeny's construction company by a former employee was unexpected, painful, and costly. Small-business owners are feeling similar stings from the explosion of employment-based suits. Cover Story, Page 12.*

Where I Stand

Express your views on the rise in employment lawsuits against U.S. firms. With some judgments running into the millions of dollars, demands are growing for legislative and judicial reforms to curb what many call lawsuit abuse. The poll appears on Page 65.

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PHOTO: ©GARY TRUMAN

Mattress retailer *Kimberly Brown Knopf did her own research and found an untapped market. Making It, Page 57.*

DEPARTMENTS

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Editor's Note

A Growing Threat To Small Firms

PHOTO: ©MIKE CLEMMER

Have you ever been aware of a lawsuit in which the motive seemed to be more about money for the plaintiff and the plaintiff's attorney than about justice? Have you ever known of an employer who had to spend major amounts of money and time to defend himself and the company against a questionable lawsuit in which the employer ultimately was cleared? Many of us could answer "yes" to both questions.

Unfortunately, the fairness and integrity of our civil-justice system are coming into question more frequently for a variety of reasons, and the growing likelihood of being sued is posing a serious threat to small businesses. Our cover-story package, written by Mike Barrier, Steve Bates, and Dave Warner, outlines why. It also explains why advocates of reform, such as John McMillan (in the photo above) in Alabama and the U.S. Chamber of Commerce, are determined to correct what many see as a good system gone wrong.

The story begins on Page 12. For details on the Chamber's reform drive, see the editorial, on Page 72. To express your views on this issue, please respond to the Where I Stand poll, on Page 65. The reform issue is critical to the future of small and large companies alike.

PHOTO: ©PAUL SOUDERS

On a lighter note, Gertie (at left), owned by businessman Kevin Wyman in Redmond, Wash., conveys what many small-business owners feel but can't express openly toward problem customers. If you ever feel like Gertie looks here, see the helpful hints we offer in "When Customers Are Bad Apples," on Page 50.

Another highly useful article to help business owners cope with management challenges is "Coming To Grips With Growth," on Page 26. If your company is facing possible expansion or may be someday, you won't want to miss this instructive article.

Mary Y. McElveen

Mary Y. McElveen
Editor

Letters

Seeing A Contradiction In Reader-Poll Results

I see an immediate paradox in the results of the October Where I Stand poll ["Mixed Mail," December]. Small business overwhelmingly opposes a 1-cent increase in the rate for first-class mail but, by a clear majority, supports full privatization of the U.S. Postal Service.

Neither small businesses nor any other businesses can have their cake and eat it, too.

Many studies have shown that it costs well in excess of 32 cents to deliver a piece of first-class mail and that the cost and risk of loss grow significantly as distance increases.

No private firm has stepped forward—nor can it do so legally at this point—to compete with the Postal Service for first-class mail. Even if a private firm could do so, it would be a money-losing proposition at 32 or 33 cents, and it almost assuredly would mean the end of the small rural post offices that many depend upon and that help bring stability to communities.

While the Postal Service could readily use the shot in the arm that privatization would bring in terms of increasing its focus on customers, I fear that full privatization would have a far more negative than positive economic effect on businesses.

What America needs are incentives for the Postal Service that would reduce the cost of service but improve the government-sponsored corporation's focus on customers. Bringing forth that debate would do much more for small businesses than any wholesale change in the Postal Service's structure.

W.J. Sheppard
New Orleans

IRS Takes A Step To Save Paper—And Aggravation

As a follow-up to the letter to the editor concerning unnecessary mailings of tax forms ["Trying To Get The IRS To Stop The Mailings," December], I have some further information to offer:

Jerry L. Haines will be relieved to know that the Internal Revenue Service has identified those taxpayers who filed or prepared their 1996 returns using tax-preparation software and will now mail them only the peel-off tax-filing label on a postcard-size mailer. The mailer mentions that the 1040 packages are available but will not be sent unless requested.

I don't know whether this took an act of Congress to accomplish, but it is a small step in the right direction.

Kirk Tinsley
Field Compliance Coordinator
Chevron Production Co.
Bakersfield, Calif.

Speaking Out Against MFN Status For China

I continue to be amazed at business's support of most-favored-nation (MFN) trade status for China ["Not-So-Great Expectations," January].

Among the elements of Chinese policy are: forced family size, brutally enforced; suppression of public opinion; suppression of religious expression; and forced labor.

When considered strictly from a monetary perspective, products from China are attractive because they are low-priced. But that low price comes at great human expense.

China's human-rights violations are massive, ongoing, and well-documented. Support of MFN status for China implies tacit approval of those violations. Continued willingness to do business with a government that openly and unrepentantly engages in such violations not only demonstrates support for that government but supplies it with the money it needs to continue with business as usual regarding human rights.

Wayne Demmer, President
Demmer Hardware
Massillon, Ohio

[Editor's Note: Many business groups, including the U.S. Chamber of Commerce, believe that increasing U.S. economic involvement in China is one of the best ways to influence human rights in that country. Granting China MFN status simply means that the U.S. will treat China's imports the way it treats the imports of most other countries trading with the U.S.]

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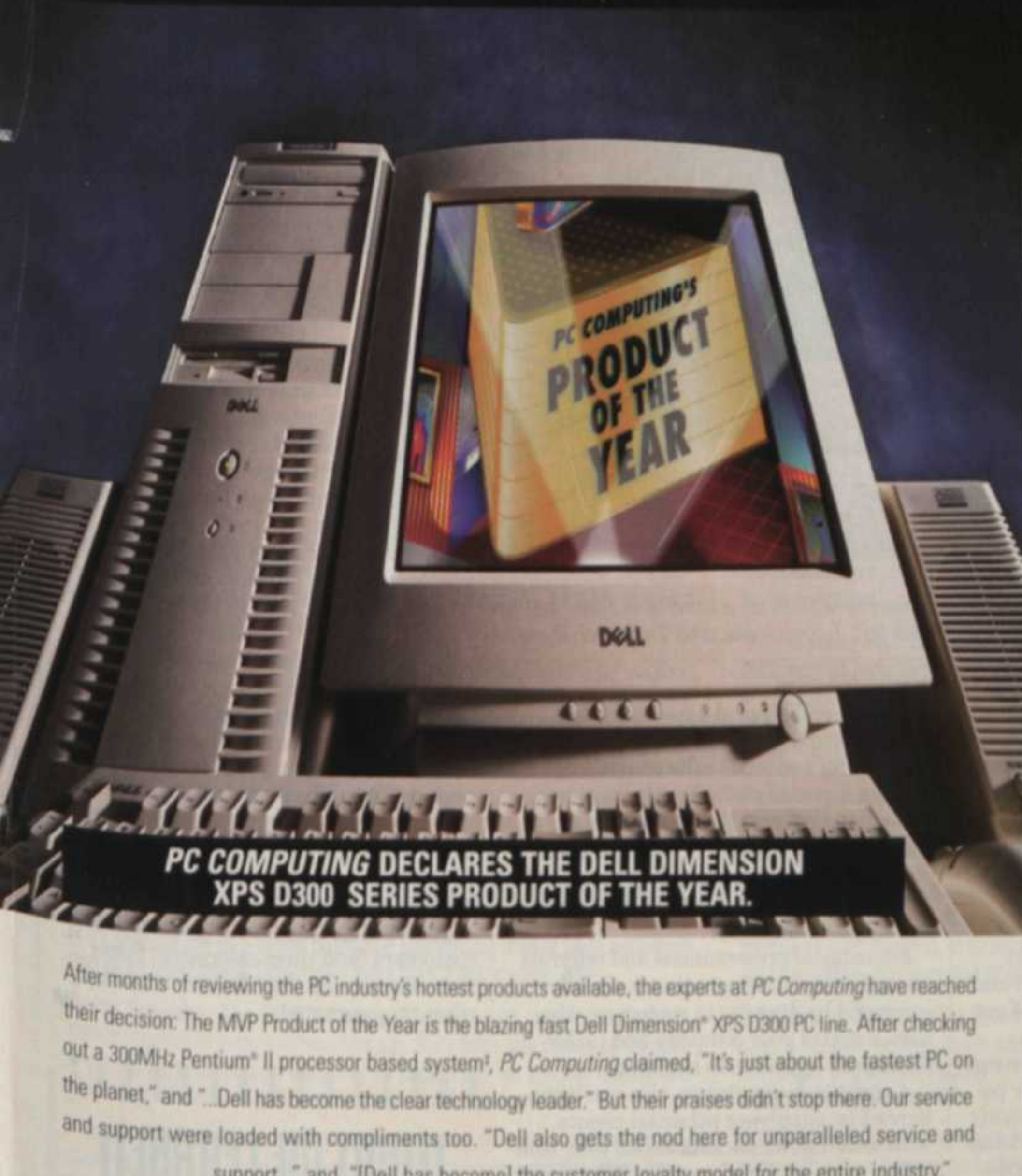

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After months of reviewing the PC industry's hottest products available, the experts at *PC Computing* have reached their decision: The MVP Product of the Year is the blazing fast Dell Dimension® XPS D300 PC line. After checking out a 300MHz Pentium® II processor based system‡, *PC Computing* claimed, "It's just about the fastest PC on the planet," and "...Dell has become the clear technology leader." But their praises didn't stop there. Our service and support were loaded with compliments too. "Dell also gets the nod here for unparalleled service and support..." and, "[Dell has become] the customer loyalty model for the entire industry."

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ENTREPRENEUR'S NOTEBOOK

Bucking Convention And Winning Clients

By Terrance, Leon, and John Resnick

Every business wants good customers. Our business targets a niche market: the wealthiest one-half of a percent of the population. And that's a tough market to crack, especially if you don't use advertising.

Resnick Associates, our life-insurance firm, specializes in estate and business-succession planning. Our success at getting upper-echelon customers is a product of our commitment to client service and to education—education not only of ourselves but of clients, potential clients, and other estate-planning professionals.

PHOTO: ©SAL DIMARCO—BLACK STAR

Operating *their life-insurance firm as a kind of mentor has been a successful approach for, from left, Leon, John, and Terrance Resnick.*

We have always believed that you must earn the right to do business with successful people. But we don't follow the traditional approaches for our industry: advertising and sales calls. Instead, we draw our clientele through our educational efforts, referrals from other professionals, and word of mouth about our reputation.

The keys to our approach to business are working with clients in a way they understand and are comfortable with and gaining the recognition and respect of our peers.

Our methods of building our practice can be applied by other firms with broader potential markets. However, if your company is successful with its current ways of doing business, it probably isn't in your best interest to abandon those approaches for an education-and-referral approach.

Success and growth without the use of advertising and sales calls do not come quickly, especially in a field known more for selling products than for educating customers. It may take months or even years before someone who has heard one of your presentations approaches you to become a client.

Educational presentations and referrals can enhance a business that is already successful by drawing in customers who have heard of your company and understand your approach to business.

A company's reputation also can be enhanced by supplying potential clients with information packets about your firm before or at an initial meeting. The packets should include testimonial letters from clients, organizations, and educational institutions with which you have worked and any other material that will help establish your firm's expertise.

In networking, you can't make a withdrawal from a source where you've never made a deposit. For that reason—and because it's important to give back to your community and your industry—you should get involved, whether it's teaching other business people or lending a hand in the community.

We get involved by making presentations to business and trade groups, teaching courses for the Pennsylvania Institute of Certified Public Accountants, and publishing articles on estate and business-succession planning. (We include the articles in our information packets.)

Our firm is also a cofounder and annual funder of the Family Business Center at Elizabethtown College near Harrisburg, Pa., one of the largest college-based family-business centers in the country.

Engaging in such endeavors provides an identity for our firm and a service to others. To retain our credibility, we do not solicit during our presentations but let the knowledge imparted speak for itself. As audience members gain familiarity with your area of expertise, they will see what separates you from the pack.

However you choose to grow your business, whether it's through advertising or education and referrals, be prepared to back up your promised service and knowledge. Nothing turns away prospective customers (and their associates) faster than discovering that they're not getting what they expected. NB

Terrance, Leon, and John Resnick are principals of Resnick Associates in Harrisburg, Pa.; Overland Park, Kan.; and Santa Monica, Calif. They prepared this account with Contributing Editor Susan Biddle Jaffe. Readers with insights on starting or running a business are invited to contribute to this column. Write to: Entrepreneur's Notebook, Nation's Business, *1615 H Street, N.W., Washington, D.C. 20062-2000.*

WHAT WE LEARNED

With perseverance, a small firm can find success by relying on education and referrals rather than advertising and sales calls.

Dateline: Washington

Business news in brief from the nation's capital.

RETIREMENT

Savings-Education Campaign Set For Summer Launch

A national campaign to promote private retirement savings will begin this year under a measure signed into law by President Clinton in November.

The so-called SAVER Act (for "Savings Are Vital to Everyone's Retirement") calls for a national summit on retirement savings to be convened this summer by the president and congressional leaders, followed by two more summits—in 2001 and 2005.

The conferences, financed by government and private-sector participants, will try to increase public awareness of the kinds of retirement plans available, how they work, and why they are important.

In addition, the U.S. Department of Labor, as the lead agency for the program, will develop public-service announcements, educational materials, and an Internet site on retirement issues. Much of this is an extension of the agency's Retirement Savings Education Campaign, launched in 1995 in conjunction with the Treasury Department.

Underlying the bipartisan effort that produced the SAVER Act is the lack of retirement saving by baby boomers—the 76 million Americans born between 1946 and 1964.

There are now just over 34 million Americans age 65 or over, according to the U.S. Census Bureau, but by 2030 there will be more than twice as many—a projected 69.4 million. The 65-and-over segment now comprises about 13 percent of the population but will account for 20 percent by 2030, the bureau projects.

A Coming Of Age

Actual and projected figures on Americans age 65 or older

	Total, In Millions	Percentage Of The Population
1997	34.1	12.7
2000	37.7	12.6
2010	39.4	13.2
2020	53.2	16.5
2030	69.4	20.0

SOURCE: U.S. BUREAU OF THE CENSUS

CHARTS: ALBERTO PACHECO

According to the 1997 Baby Boom Retirement Index, compiled by Merrill Lynch & Co. of New York City, baby boomers collectively were saving only 38.5 percent of the funds they will need to maintain a comfortable retirement. The annual Merrill Lynch survey, started in 1993, indicated that the post-World War II generation faced "a massive shortfall in saving for retirement."

Another survey, released last year by the Employee Benefits Research Institute, a Washington-based research group, found that three-quarters of the nation's workers had no idea how much money they would need to save for retirement.

Although 76 percent of the workers who were offered a 401(k) retirement-savings plan at work were taking advantage of the plan, less than half were contributing the maximum amount possible, the institute found.

Rep. Harris Fawell, R-Ill., the prime sponsor of the SAVER Act, warns that the nation faces "a ticking demographic time bomb that requires increased retirement savings."

Educating the public about the problem "is the first step in defusing that retirement time bomb," he adds.

—Stephen Blakely

ENVIRONMENT

Climate Treaty Faces Cold Reception In Congress

The controversial treaty on stemming global warming that emerged from international negotiations in Japan late last year faces a cloudy future in the U.S. Congress.

American business and labor leaders widely attacked the global-warming pact Dec. 11, the day the Clinton administration agreed to accept it. They described the so-called Kyoto Protocol on climate change as "unilateral economic disarmament" for the United States and vowed to block its ratification by the Senate, which the Constitution requires for U.S. approval of international treaties.

"It is a terrible deal ... and we will campaign hard and we will defeat it," vowed William F. O'Keefe, chairman of the Washington-based Global Climate Coalition (GCC), after the protocol was approved by international delegates. The GCC represents U.S. business and industry on the global-warming issue.

The U.S. Chamber of Commerce, a member of the GCC, urged Congress to reject the treaty because it would stifle U. S. economic growth and eliminate jobs. "The American people and its Congress are too smart to buy this prescription for economic suicide," said Chamber President and CEO Thomas J. Donohue.

Vice President Al Gore, who has championed the global-warming treaty and who directed U.S. negotiations at Kyoto, acknowledges that the administration has an uphill fight in Congress. The Senate last year adopted 95-0 a resolution opposing any global-warming agreement that applies exclusively to developed nations—a key element of the final Kyoto Protocol.

Among other things, the global-warming treaty would require the 38 major industrialized nations to reduce emissions of the six so-called greenhouse gases—primarily

ENVIRONMENT

carbon dioxide—blamed for global warming. Greenhouse gases are produced mainly by the burning of fossil fuels such as coal and oil.

Collectively, the developed nations would have to cut these emissions by 5 percent between 2008 and 2012, with Europe, the United States, and Japan making the biggest reductions.

Developing nations that are also major sources of greenhouse gases, such as China and India, were asked to set voluntary reduction targets. Future meetings of the treaty parties will be held to decide on "appropriate and effective" ways to enforce the global-warming agreement.

For all the controversy over the global-warming treaty, it is unclear when congressional opponents will get a chance to vote against it. Gore has said the treaty will not be submitted to the Senate for ratification until some developing nations, notably China or India, agree to participate in it. That would not occur at least until the next international summit on global warming, slated to be held in Argentina late this year.

—Stephen Blakely

ECONOMIC STATISTICS

A Guide For Comparing Annual Expenses, Revenues

The table below enables you to make approximate comparisons of business expenses and revenues in 1997 with like amounts in previous years, taking into account the cumulative effect of inflation.

The central element of the guide is the value of a dollar in any year relative to 1997, now that the U.S. Bureau of Labor Statistics (BLS) has determined that last year's inflation rate was 1.7 percent.

The table shows, for example, that it would have required $4.14 last year to match the purchasing power of $1 in 1970.

You can use the information contained in the guide to determine, for instance, that sales of $3 million in 1997 actually were nearly $1 million lower in value—in 1977 dollars—than sales of $1.5 million in 1977 when inflation is taken into account. (When the 1977 figure of $1.5 million is multiplied by the factor of 2.65 in the table, the result is approximately $3.98 million.)

The guide is derived from the monthly Consumer Price Index calculated by the BLS.

—Albert G. Holzinger

How Costs Have Risen

To determine if a recurring business expenditure has been increasing by more or less than the cumulative rate of inflation, multiply the outlay in any year by the figure to the right of the year. Compare the result with the 1997 expenditure to determine whether that business cost has increased or decreased relative to inflation as measured by the federal government's Consumer Price Index. This table reflects the CPI increase of 1.7 percent in 1997.

1970	4.14	1977	2.65	1984	1.54	1991	1.18
1971	3.96	1978	2.46	1985	1.49	1992	1.14
1972	3.84	1979	2.21	1986	1.46	1993	1.11
1973	3.61	1980	1.95	1987	1.41	1994	1.08
1974	3.26	1981	1.77	1988	1.36	1995	1.05
1975	2.98	1982	1.66	1989	1.29	1996	1.02
1976	2.82	1983	1.61	1990	1.23	1997	1.00

SOURCE: U.S. BUREAU OF LABOR STATISTICS

POSTAL SERVICE

Revised Bill Focuses On Private Competition

Rep. John M. McHugh, R-N.Y., has refined his pending Postal Service reform proposal to provide the government-sponsored corporation with more-explicit ground rules about the products and services it offers in competition with private businesses.

McHugh, chairman of the House Postal Service Subcommittee, made the change in response to increasing friction between the agency and companies such as United Parcel Service, Federal Express, and Mail Boxes Etc. These firms say that the Postal Service's government connections give it unfair advantages in overseas parcel delivery and in boxing and wrapping packages for domestic delivery.

Under the McHugh proposal, the Postal Service could not subsidize its competitive services substantially with revenue from its traditional, virtual-monopoly services such as first-class mail. In addition, competitive services would be subject to antitrust laws.

Also under McHugh's measure, the Postal Rate Commission, which makes recommendations to the Postal Service's Board of Governors on proposed rate and service changes, would be renamed the Postal Regulatory Commission and given stronger powers to monitor the Postal Service's finances.

The revised bill would have no immediate impact on the across-the-board rate case pending before the rate commission. Under the rate proposal, the price of a first-class stamp would rise from 32 cents to 33 cents. A decision on the rate case is expected this spring.

Last year, McHugh's subcommittee held five public hearings on his original bill, but no consensus emerged on its central issues. One issue was whether to give the Postal Service more autonomy in setting rates, subject to price caps. The revised bill would tie the proposed price caps more closely to the inflation rate.

A previous proposal to allow private delivery firms to place mail in homeowners' letter boxes on a trial basis has been scrapped, according to McHugh's staff.

Postal Service spokesmen have had no comment on the revised bill.

—Steve Bates

FOR THE RECORD

■ **A little-noticed action** by the Federal Communications Commission has led to substantial restrictions on the use of toll-free numbers at public pay phones.

The FCC ruled in October that each time a customer dials a toll-free number from a pay phone, the owner of the number must pay 28.4 cents to the owner of the phone. As a result, several owners of toll-free numbers stopped accepting calls from pay phones.

The change has been particularly burdensome for hotels, airlines, trucking companies, long-distance phone companies, firms with traveling sales representatives, and businesses that depend heavily on pagers. Estimates of the total cost to businesses and consumers range as high as $1 billion per year.

Several industry groups have asked the FCC or courts to roll back the change; at press time, none of these efforts had been successful.

The FCC action was part of a broad effort to deregulate the pay-phone industry. The initiative also boosted the cost of making a local call from a pay phone to 35 cents from 25 cents.

—Steve Bates

Managing Your Small Business

Expanding the range of holiday options; tips on selling a service firm; encouraging customer comments.

By Roberta Maynard

THE WORKPLACE

Covering The Bases With Holiday Choices

Sometimes a simple idea can have significant benefits. So it was with an unusual plan for holidays adopted by Marquardt & Roche/Meditz & Hackett, a marketing and communications firm based in Stamford, Conn.

When Howard Meditz became president of the firm a little over a year ago, he faced the task of issuing a list of holidays to be observed. "I thought it terribly inappropriate for me to choose which holidays employees had to take," he says.

So Meditz asked an employee committee to put together a list of holidays from which the firm's 35 employees could each choose any 11.

In some cases, a Monday or Friday next to a holiday was nominated by the committee. Valentine's Day and some school-related holidays were added as options.

While the idea was envisioned primarily as a benefit for workers, it helps clients, too, Meditz says. Chances are, one of the three people assigned to each account will be available to help a client who calls on a day when, in the past, the office would have been closed. Because the building is open every day of the year, having only one or two people in the office on a given day doesn't add measurably to the firm's operating costs.

The holiday plan worked so well that Meditz made it permanent this year, and he has asked for suggestions from workers for expanding the list of dates that can be selected. "It was something very simple to institute, and it gives workers a greater sense of control over their schedules," he says. "Now I wonder why we haven't always done it this way." ■

PHOTO: ©STAN GODLEWSKI

Allowing employees *to choose 11 holidays from a list that includes Valentine's Day is good for workers and clients, says Howard Meditz, president of a marketing and communications firm in Stamford, Conn.*

SALES

Finding The Essence Of Good Salespeople

Have you ever hired someone who looks and sounds like a good salesperson but turns out to be a disappointing performer? To avoid such an outcome, consider the unconventional advice of Marc Miller, CEO of ChangeMaster Corp., a sales consulting firm in Twinsburg, Ohio. The next time you're evaluating a potential sales employee, forget skills and experience, he says. "Hire behavior."

Whatever their background, successful salespeople have certain characteristics in common, says Miller. You can use personality testing or interview questions that will identify these characteristics:

The need to achieve. Top salespeople are scorekeepers who are highly motivated and look for opportunities to prove themselves. Be careful to differentiate this from the need for power or control or to be liked by others, all of which get in the way of good sales performance, Miller says.

A high intensity level. Good salespeople are typically very focused.

An unwillingness to quit. A high level of persistence characterizes a good salesperson.

The best salespeople, says Miller, dislike relying on others, love a challenge, hate being micromanaged, and approach their work with a sense of urgency.

It can be a mistake, he has found, to hire someone who has a smooth and polished appearance or an engaging manner with people but who lacks drive. Also, companies limit their options by not talking with enough candidates.

Hiring under pressure contributes to the problem, he notes. "Managers hire when they have to, which is the worst time," says Miller. To avoid hiring out of desperation, he says, "always be on the lookout for good salespeople. Keep a list of good candidates, and, most important, wait until you find the right person." ■

Roberta Maynard is a business writer in Washington, D.C.

EXIT STRATEGIES

Suggestions On Selling Your Service Firm

The difference between success and failure in selling a professional service business can come down to timely legal advice and practical business considerations.

Stuart R. Kaplan, an attorney with the Pittsburgh law firm of Eckert Seamans Cherin & Mellott, LLC, offers key points for small-business owners to consider when they're planning to sell a firm:

Clarify the deal. Avoid the common mistake of leaving key terms ambiguous or, worse, omitting them. State clearly what is being conveyed, what will be payable, and when.

Among other details, sale documents should state which party will be entitled to post-closing income for pre-closing services. It should be stated clearly who will be responsible for the company's accounts payable, employee benefits, deferred obligations, and contingent liabilities. Any terms used in a purchase-price formula, such as "gross billings" and "net income," should be defined as precisely as possible.

Avoid delays. As a rule, it takes four to eight weeks to complete the sale of a service business once a purchaser has come forward with a letter of intent to purchase. Buyer and seller can drag out a transaction unnecessarily for weeks or even months.

A seller can expedite the process by addressing the purchaser's requests for information about the business promptly and specifically.

By the same token, the purchaser should not be allowed to peruse company books and records endlessly. Set a reasonable time limit based on the complexity of the deal.

Check the status of your service agreements. Along with intangible assets such as goodwill, reputation, and trade names, a valuable asset of a service firm is its contracts to provide professional services. However, often these contracts cannot be assigned to third parties, or assignment may require consents and approvals that can be difficult to obtain.

Before you sign any binding agreements, be certain that you have the right to sell or assign your contracts to the purchaser.

Be discreet. To the extent possible, avoid telling customers or clients about the sale until closing. If the purchaser tries to change significant terms or conditions at the last minute, you may feel pressured to accept an unfavorable deal because it would be awkward to back out without losing face. ■

MARKET RESEARCH

Warming To The Idea Of Customer Feedback

Nothing makes a company work harder at communicating with its customers than the threat of losing market share. WinterSilks, Inc., a catalog business in Middleton, Wis., experienced the threat firsthand.

The company sells products such as winter underwear, sleepwear, dresses, and bedding.

Most important, says Reindl, are the ways the information is used to sharpen the company's competitive edge. The results of all these efforts are summarized monthly, and the issues of greatest concern to customers form a top-10 list.

In response to customers' comments, the company has added petite sizes, big and tall sizes, and children's clothing. Shipping charges were reduced on two types of products, gift-certificate handling was improved, and the design of gift boxes was changed. Comments have even led to changes in the catalog's product descriptions.

As a result, says Reindl, the company has seen a steady rise in the number of customers who make positive rather than negative remarks. "In terms of the payback, these efforts are very cheap," says Reindl. "To become more competitive, you simply have to do it." ■

PHOTO: ©BRENT NICASTRO

Making it easy *for customers to register comments has been a boon for catalog company WinterSilks, Inc., says John Reindl, vice president of operations, talking with customer-service representative Nancy Latta.*

When the catalog business started heating up in the early 1990s, the company left behind its haphazard approach to gathering customer feedback and began tackling the task in earnest to keep up with competitors.

Its first step was to hold focus groups. But, as John Reindl, vice president of operations, points out, each group offered the opinions of only 12 customers out of a customer base of more than 1 million. So, gradually, WinterSilks came up with a variety of ways to capture the opinions of a greater number of customers.

It added a comment section to each product-return form, trained each phone representative to make careful note of any customer complaints or compliments, and established a toll-free phone number for customers' comments.

The company also began sending postcards on various topics to 250 customers each month. And an extensive four-page survey is mailed semiannually to up to 1,000 customers.

NB TIP

Your Image On Fax

When sharpening your company's image, don't forget to spruce up your fax cover sheet. A cover sheet should look as professional as your company letterhead, says Barbara Pachter, a communications trainer in Cherry Hill, N.J. Make sure it includes your firm's name, address, phone and fax numbers, the number of pages being sent, and the action you'd like the recipient to take. NB

COVER STORY

Lawsuits Gone Wild

By Michael Barrier

It sounds like an employer's worst nightmare. A minority employee fails to receive a promotion. He sues the company, charging racial discrimination. His white supervisor—who has already resigned to take a job with higher pay at another company—joins in the suit. The supervisor claims that he was first pressured not to promote his subordinate and then, after he supported the subordinate's complaint of discrimination, was denied a promotion himself.

The court record shows no clear-cut evidence that the company discriminated, but a jury finds for the plaintiffs anyway. It awards them a sum covering economic harm, emotional distress, and punitive damages. The total: $89.5 million, one of the largest awards ever made by a state or federal court in an employment-law case.

An appellate court reduces the punitive damages sharply—but they still total $7.8 million. The court affirms the damages for emotional distress, which are, at a total of $5.5 million for the two plaintiffs, also extraordinarily high. The damages in all three categories, including $4 million affirmed for economic harm, total $17.3 million.

That case is now before the California Supreme Court, which must decide if the employer, Hughes Aircraft Co., is entitled to a new trial.

Hughes Aircraft, of course, is not small. And a small-business owner may be tempted to dismiss the likelihood of such a calamity happening to him or her as improbably remote. But where employment law is concerned, a case like this has everything to do with small companies.

Employment law is a form of tort law—the branch of civil law through which plaintiffs seek recompense for wrongs they supposedly have suffered.

Tort law in recent decades has been a powerful weapon in the hands of trial lawyers. They have drawn blood from business repeatedly, sometimes winning monetary awards that are so astonishing that they attract nationwide attention. (See "The High Costs Of Being Sued," Page 15.)

Although trial lawyers have tended to go after companies with "deep pockets," small companies have become increasingly vulnerable to employment lawsuits. The grounds for such suits have multiplied in the past few decades as a result of state and federal laws barring discrimination based on race, disability, age, and gender.

Sometimes the lawsuits would seem ludicrous if it were not for the costs they impose on the businesses that are targets.

Take, for example, the case of a 16-employee machine shop in a Western state. According to the firm's owner, one of its employees—a man approaching retirement age—volunteered in front of witnesses to be laid off if layoffs became necessary.

Eventually, business slowed to the point that the employee had to switch jobs in the plant or be laid off, and, the owner says, the employee chose to be laid off. Two years later the laid-off employee sued, charging age discrimination. In 1997, after a year and a half of litigation, the company settled, paying a total of $140,000 in damages and attorneys' fees.

The owner says that he believed he had no choice. His accountant told him that if he settled for that much, his costs would be no more than they would be if the case went to trial and he won—and there was the very real danger that a jury would find for the plaintiff and give him a large award. So the owner decided, he says, "to protect the company and the jobs of the people here." (He says the terms of the settlement preclude his

PHOTO ©DOUG WILSON—BLACK STAR

Your small business can be devastated if a trial lawyer and a disgruntled employee file a lawsuit. But you can take steps to protect yourself.

The employment lawsuit *that disrupted Terry Deeny's Seattle construction company happened years ago, but such suits burn in the memories of small-business people who suffer through them. "Once you bring attorneys into the picture," Deeny says, "it's a bad situation."*

being identified in this article.)

"It's really kind of heartbreaking to get involved with the legal system," he says. "You think you're going to be treated fairly, and it all boils down to dollars and cents."

There are many such examples, says Michael Lotito, managing partner of the San Francisco office of Jackson, Lewis, Schnitzler & Krupman, a New York City-based national law firm that specializes in representing management in labor and employment cases.

He cites one in which an employee appropriated company property for her own use. After she was terminated, she sued, alleging sexual harassment "even though she had never mentioned any type of harassment during her employment," Lotito says. To date, the company has had to spend about $100,000 in legal fees to defend itself.

Lotito also cites a case in which an employee's claim of sexual harassment was valid and the company fired the offenders, yet the harassed employee sued anyway—after she left the company for a better-paying job—and won punitive damages of $1.2 million. The employee's attorney wants the company to pay his legal fees, which he puts at $600,000; that would be in addition to the fees the company has paid its own lawyers, which total around $300,000.

The Expansion Of Damages

Trial lawyers gained new financial incentives to pursue employment-law cases against small firms when Congress passed the Civil Rights Restoration Act of 1991. That law expanded the remedies available to victims of employment discrimination under statutes such as Title VII of the 1964 Civil Rights Act and the Americans with Disabilities Act (ADA), which was enacted in 1990.

Plaintiffs in a wide range of cases can now seek not just compensation for economic damages and attorneys' fees but also punitive damages and damages for emotional distress.

Compensatory damages for emotional

COVER STORY

distress "are frequently the largest component of a verdict," says Chrys Martin, an attorney with the law firm Bullivant Houser Bailey in Portland, Ore. It's very likely, she says, that if someone gets, say, $60,000 for lost wages, they'll get at least as much for emotional distress.

"We had a case where a woman had no lost wages, but we lost the case for $125,000 [for emotional distress]—which is a large verdict here in Portland," Martin says. "She did not have one witness testify. Just her own testimony that this upset her—sleepless nights, stomachaches, those kinds of things. The jury didn't like what happened to her."

The Price Of Litigation

The total cost of civil suits for wrongful acts, injuries, or personal or property damage as a percentage of each nation's gross domestic product in 1994.

SOURCE: TILLINGHAST-TOWERS PERRIN

Plaintiffs' lawyers argue that it's often only through such emotional-damage awards that the courts can discipline abusive employers. Says Mary Anne Sedey, an attorney with the St. Louis firm Sedey, Moench and Associates and president of the National Employment Lawyers Association: "I used to have to turn people away who had very legitimate claims. They had suffered outrageous sexual harassment on the job, but they didn't have a wage loss; they quit the job and got another job."

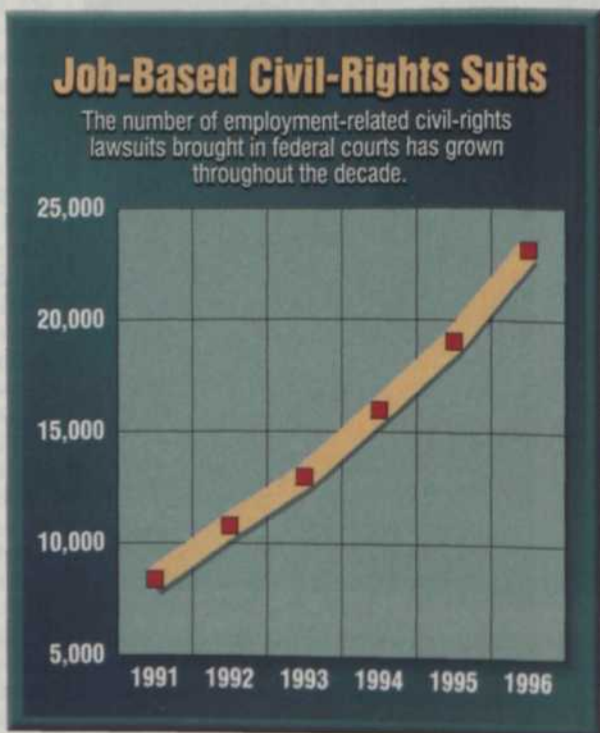
Lawyers' Influence

However strong the emotions an employer's conduct may arouse, critics doubt that many workers would nurse their wounds without lawyers' encouragement. Employment-law litigation is "clearly following where the money can be obtained, rather than what workers spontaneously think of as the original grievance," says Walter K. Olson, a senior fellow at the Center for Judicial Studies at the Manhattan Institute, a nonpartisan research organization in New York City, and the author of *The Excuse Factory: How Employment Law Is Paralyzing the American Workplace* (Free Press, $25). "Now that it's easier to sue for emotional distress, it seems that there's scarcely a fired worker who does not have psychiatric distress."

If there's a bright spot for small business, it is that the 1991 law caps the amounts that can be assessed for punitive and emotional-distress damages. The total for such damages cannot exceed $50,000 for firms with 15 to 100 employees. The ceiling rises after that, to $300,000 for the largest companies. (Firms with fewer than 15 employees are not subject to the 1991 law.)

Those caps may not sound frighteningly high, but some states—among them California, as the Hughes case demonstrates—have anti-discrimination laws that are even tougher on employers than federal law, extending protection to workers in companies with fewer employees and imposing no caps on damages.

In addition, says Portland attorney Martin, successful plaintiffs "almost always get an attorneys'-fees award, and the awards have been really outrageous. In many of these cases, the awards are many times higher than the damages."



Job-Based Civil-Rights Suits

The number of employment-related civil-rights lawsuits brought in federal courts has grown throughout the decade.

SOURCE: ADMINISTRATIVE OFFICE OF THE U.S. COURTS

CHARTS: ALBERTO PACHECO

Some states have laws that are employer-friendly, but there is no real sanctuary anywhere. "Employment law is the most cross-cutting, the most universal business exposure to the problems of the liability system," Olson says. "In part because so much of it is federal, there aren't any states where you're particularly safe from it."

Throughout the country, plaintiffs' lawyers who once might have turned away an aggrieved employee now have powerful incentives to file such suits.

There is nothing to prevent a plaintiff's attorney who has been awarded attorneys' fees from also getting an agreed-upon percentage of the plaintiff's damages as a contingency fee. It's easily conceivable that a trial lawyer could suck hundreds of thousands of dollars out of a small business in a successful suit and then walk away with much more of that money than the plaintiff.

"Trial lawyers are entrepreneurs," says Gregory P. Joseph, an attorney with the firm Fried, Frank, Harris, Shriver & Jacobson in New York City. "You give them a profit opportunity, and they're going to focus on it. Congress is giving a series of profit opportunities; those are not going to be ignored." Joseph chairs the American Bar Association's litigation section, which has about 60,000 members from both the plaintiffs and defense bars.

A Surge Of Litigation

There's no way to measure the exact impact of the 1991 federal law on litigation (and threats of litigation) involving small business, but the number of employment-related civil-rights suits—that is, suits alleging illegal discrimination—filed in federal district courts has risen sharply in the '90s (see the chart at left), at a rate 50 percent higher than that for civil-rights suits generally.

The Society for Human Resource Management (SHRM), a national organization of human-resources professionals, surveyed its members last year and found that 57 percent of respondents had

been targets of employment-related lawsuits in the previous five years.

Lawyers with little experience in this complex field are entering employment law in large numbers. "There used to be only a handful of employment attorneys," says Martin, who chairs the employment-law committee of the Chicago-based Defense Research Institute, a nationwide organization of defense attorneys. "Now there are hundreds of them in every major city."

Martin decries inexperienced lawyers for plaintiffs in employment litigation "who don't know a good case from a bad case," and Sedey of the National Employment Lawyers Association acknowledges that "now there are lawyers who see the availability of compensatory [damages for emotional distress] and punitive damages as an incentive to get involved in this area. As time passes, they will become more competent at it," so that fewer suits will be filed but the cases will be stronger.

Olson suggests, though, that the legal system is a long way from reaching equilibrium as far as employment law is concerned. This, he says, is because "the influx of lawyers, the expansion of damages, and the addition of new laws and new doctrines"—in particular, those that protect an increasing number of categories of workers from dismissal unless certain conditions are met—have been occurring at such a rapid pace.

Hard Lessons For Small Firms

In this unstable environment, many small-business owners "first become educated about employment-law disputes when they're at the other end of a gun," says Lotito. "It's a difficult and expensive learning experience."

The small-business defendant often winds up facing a hard business reality: It may be in the best interests of the company to settle with the plaintiff and swallow a loss of thousands of dollars, however unjustified the original complaint. Says Jeffrey L. Needle, a plaintiffs' attorney in Seattle and a spokesman for the Association of Trial Lawyers of America (ATLA): "Employers have to make some calculated decisions about what the risks are."

When a lawyer for plaintiffs is considering whether to accept a client, Olson says, the question often is not whether the client might prevail in a jury trial but whether "a quick $50,000 settlement" can be squeezed out of the defendant. "Often the answer will be yes," he says, "even for a not-very-big business."

Many times, Lotito says, "I wind up being not so much a lawyer as a psychologist," emphasizing to an angry and frustrated client "the uncertainty of getting

The High Costs Of Being Sued

Some high-profile lawsuits against businesses have sparked nationwide interest in efforts to prevent excessive awards for punitive damages and to curb the costs of defending against such actions. Consider some of the cases that have drawn attention:

Hot Coffee

An 81-year-old woman was awarded $160,000 in compensatory damages and $2.7 million in punitive damages in August 1994 from McDonald's Corp. after she was burned by coffee purchased at a McDonald's restaurant in Albuquerque, N.M. The cup spilled while she was holding it between her legs while trying to add cream and sugar. She was in a car at a drive-through window. She sued the company for negligence, claiming that its coffee was too hot.

A higher court in 1994 reduced the punitive damages to $480,000.

Fresh Paint

In 1992, an Alabama jury awarded a doctor $4,000 in compensatory damages and $4 million in punitive damages from BMW of North America Inc. because the car company failed to disclose that it had repainted parts of his new $40,000 BMW, touching up $601 worth of damage done during shipment from Germany.

In 1994, the Alabama Supreme Court cut the punitive-damages award to $2 million. That sum was "grossly excessive," the U.S. Supreme Court ruled in 1996, and it sent the case—in which the U.S. Chamber of Commerce's National Chamber Litigation Center had filed a friend-of-the-court brief on behalf of BMW—back to the Alabama Supreme Court. In May, the doctor's award for punitive damages was cut to $50,000.

Fire On The Rails

A jury in Louisiana in September awarded $3.5 billion to about 8,000 residents of a New Orleans neighborhood who were evacuated from their homes in 1987 when a rail car carrying a volatile chemical leaked and then caught fire. No residents were injured or killed, and no long-term health effects have been reported as a result of the chemical fire.

In a suit against five railroad companies, a trial lawyer representing many of the residents claimed that the companies, including CSX Transportation, based in Richmond, Va., were "careless and indifferent" to the plight of those evacuated. He said that the residents suffered physical and emotional distress.

CSX's sole connection to the incident was that it owned the track where the chemical leak occurred, and the federal National Transportation Safety Board found that CSX was not responsible for the leak. Nevertheless, the company was assessed $2.5 billion of the $3.5 billion award for punitive damages.

CSX intends to appeal.

Highway Design

A 1985 case in Texas involving Bridgefarmer & Associates did not result in a huge award for damages but nevertheless cost the 15-employee engineering firm $200,000 in legal fees to defend itself.

Bridgefarmer and five larger businesses were sued by a car-crash victim who claimed that the road where his accident occurred had been designed poorly. All six companies had been involved in the road's construction. It was determined that the plaintiff, who was driving, had been speeding and had ignored detour signs. He also had a blood-alcohol level of 0.09 percent eight hours after the crash. Under Texas law, a person registering 0.1 percent is legally drunk.

After five years of legal wrangling, Bridgefarmer settled the driver's claim for $35,000.

A Broken Toe

Southeastern Guide Dogs, a nonprofit Palmetto, Fla., organization that raises and trains guide dogs for the visually impaired, was sued in 1995 for $160,000 by a woman and her husband, a minister, after a blind man learning to use one of Southeastern's dogs stepped on the woman's toe and broke it.

The suit was filed more than a year after the incident, which occurred at a shopping mall. Witnesses said that the woman made no effort to step aside as the dog and the blind man approached.

Although the couple eventually dropped the suit, the case cost Southeastern at least $10,000 in legal and other fees and hundreds of hours of employees' time, according to a spokeswoman for the organization.

—David Warner

in front of a jury that is not composed of company presidents."

It's because juries are so unpredictable, Martin believes, that so many employment-law cases get settled without a trial. "If you get a bad jury," she says, "you can get killed."

There can be yet another incentive for companies to settle. "People don't advertise these kinds of things," says Terry Deeny, chairman and CEO of Deeny Construction in Seattle, about sexual-harassment cases in the construction industry. "When they happen, you don't hear about them, because it's embarrassing and expensive."

Often, Lotito says, "especially when you deal with harassment complaints, what happens is that there's a rush to a confidential settlement, before anything is filed, because people are concerned not just with money and emotion but also with reputation."

Destructive Power

Even when sexual harassment is not involved, employment cases of all kinds can be exceptionally difficult and unpleasant to resolve. Says Lotito: "Employment disputes are very much akin to marital disputes, family disputes."

Deeny's construction company weathered just such a suit—the only one ever filed against the company in its 59 years in business. That suit was not part of the current litigation boom—it was filed in the 1980s and did not involve a claim of illegal discrimination—but in its destructive power it was identical to many more-recent suits.

Enough time has elapsed, though, that Deeny can bring himself to talk about the suit for the record, unlike many victims whose wounds are fresher.

The Deeny suit involved a family quarrel. It was filed by a relative by marriage whose claim for $6 million, Deeny says, was based on a supposed promise of lifetime employment by Deeny's deceased father. "I didn't take it seriously at all," Deeny says of the relative's claim of wrongful termination. "My attorney didn't take it seriously, either." But the suit turned out to be deadly serious.

"We had to value the company," Deeny says, "and that cost $25,000. Then we had depositions that went on for weeks and weeks." After 2½ years of conflict that consumed most of his time and energy, Deeny accepted his attorney's suggestion to bring in a mediator.

Deeny wound up paying attorneys' fees for both sides, which totaled more than $250,000. He also bought out the relative's share in the company, ultimately spending around $750,000—more than the company's annual revenues at the time.

"In 1980, I had $1 million in the bank and didn't owe anybody anything," Deeny says. "In 1990, I had a $250,000 loan and 10 cents in the bank."

Deeny Construction has recovered—it now has 35 to 40 employees and annual revenues of around $4.5 million—but the company's prosperity hasn't erased Deeny's bad memories. "Once you bring attorneys into the picture," he says, "it's a bad situation."

How Insurance Premiums Are Spent

The following percentages show how companies that offer tort coverage—against wrongful acts, injuries, or personal or property damage—allocate the premium dollar. Nearly two-thirds of insurers' costs are payouts to claimants and their attorneys in civil suits.

SOURCE: TILLINGHAST-TOWERS PERRIN

"Preventive Maintenance"

As Deeny's experience indicates, a small-business person's first priority must be to prevent a suit from being filed—not to win one after it is filed.

Obeying the laws against discrimination is one obvious way to do that, and plaintiffs' lawyers insist that there's nothing difficult about it. The prohibitions are clear, Sedey says: "The notion that this is somehow hard to understand is incomprehensible to me."

Eugene Volokh, a law professor at the University of California at Los Angeles, agrees that "the ban on intentional discrimination isn't particularly vague. On the other hand, the ban on sexual harassment—on the creation of a hostile or abusive work environment—is extremely vague. Employers know they have to shut up their employees so that they don't say offensive things"—but they don't know for sure what those offensive things are, he says, so "they just have to guess."

Likewise, he says, the ADA "is really, really bad in many respects. It's not just a ban on discrimination, it's a requirement of discrimination. It requires you to favor handicapped people."

The ATLA's Needle says that "some fine-tuning might be appropriate"—and the courts are already doing that, he suggests. "They're in the process, I think, of diminishing the breadth of the ADA."

Such fine-tuning could continue for quite a while in all areas of employment law. Martin says that "it will be another five years, probably," before enough cases "get to trial, all across the country, and go up on appeal and are reversed or affirmed" to restore some element of predictability.

In the meantime, and despite the uncertainty, small businesses need to adopt what Robert L. Fanter, a defense attorney with Whitfield & Eddy PLC in Des Moines, Iowa, and president of the Defense Research Institute, calls a "preventive maintenance" program for personnel problems. Here is a checklist of preventive measures recommended by Fanter and others:

Make a realistic assessment of whether you are at risk.

You may need to be especially careful, for instance, if some employment-law case has recently received wide publicity in your community. If a jury awarded a large sum to another company's employees, one of your employees might start getting ideas.

Try to hire people with the right values.

Hire people who, as Lotito says, "buy into the idea that they have to show you how well they perform before being rewarded. If you hire individuals who feel that life owes them, that life has thrown them a curveball they've never been able to catch, what makes you think that you're going to turn them around?"

Document what you are doing and why you're doing it.

"Make sure you have good and clearly articulated reasons" for whatever employment decisions you make, Volokh advises. Even when you're inclined to overlook an employee's mistake, don't do it—keep a record "whenever your em-

ployee does something wrong, even if it's not a firing offense."

Adopt strong, clear employment policies and procedures.

If you get sued for sexual harassment, it probably will make a difference in court if you can show that you have a sexual-harassment policy that has been enforced.

"Usually," says Betsy Plevan, a defense attorney with the firm Proskauer Rose LLP in New York City, "those policies would include some sort of grievance mechanism, so if an employee has a problem, you have a mechanism available for them to try to resolve it."

Employment applications and employee handbooks should state explicitly that employment is "at will"—that is, both employer and employee are free to end the relationship at any time.

An employer of any size, Martin says, can require employees to acknowledge reading and accepting the policies in an employee handbook upon being hired; the handbook can provide for mandatory arbitration of employment disputes and a waiver of the employee's right to a jury trial in such disputes.

Such provisions "are fairly routinely being upheld," she says. Putting together such a handbook requires an attorney's help, though, since state laws differ greatly.

Stay abreast of the various federal rules and deadlines.

That includes keeping the employee bulletin board up to date, even when some of those required posters seem to invite employees to sue you.

Cut your losses when you see trouble ahead.

"Try to be sensitive to situations where you think an employee is going to be litigious when they're being terminated," Plevan says. "Consider the possibility of paying them a little severance in exchange for a [promise not to sue]. You're not going to do that if somebody is being fired for stealing, but if it's a performance issue, you may save yourself a lot of headaches."

Talk to your insurance broker about taking out employment-practices liability insurance (EPLI).

When employers have EPLI, Martin says, "if they do get hit, they can afford to litigate. They've got somebody paying for their defense costs; they may even have indemnity. There are scores of products on the market right now at much more reasonable prices than a couple of years ago, with very inclusive coverage."

PHOTO: GERICA LANNER—BLACK STAR

Lucrative settlements—*not workers' grievances—now are driving employment lawsuits against businesses, says author Walter K. Olson of the Manhattan Institute.*

There is, of course, just so much that a business can do on its own to protect itself from unjustified lawsuits. Ultimately, reforms in both state and federal law offer the best protection. Business has a model for such a reform effort in its increasingly successful counterattack against expanded product liability.

According to the New York City-based Insurance Information Institute, an industry-sponsored communications organization, half the states passed laws to limit product liability between 1986 and 1996, and even more states acted to limit punitive damages. In 1996, Congress—fulfilling one of the promises in the Republicans' "Contract With America"—passed a bill with bipartisan support that would have imposed uniform federal product-liability standards on the states, but President Clinton vetoed it.

The U.S. Chamber of Commerce, which has spearheaded the product-liability reform effort, will broaden that campaign this year to embrace thorough reform of the civil-justice system, with a special emphasis on employment law.

"Groundless suits by dismissed employees are a major drain on small businesses," Chamber President and CEO Thomas J. Donohue says. "We need to find ways to discourage suits that don't serve any purpose except to line trial lawyers' pockets."

According to Lawrence Kraus, a Chamber senior vice president who will run the reform drive, the Chamber will pursue an effort to bar judges from hearing cases involving attorneys or clients who have contributed to their election campaigns and will support adoption of the "loser pays" rule in areas such as employment litigation. Under that rule, the losing party in a lawsuit would have to pick up the tab for the fees of the winner's attorneys. The adoption of such a

rule, already in use in Europe, "would eliminate a lot of meritless litigation almost overnight," Kraus says.

Another potentially powerful reform would be to cap punitive damages—and damages for emotional distress as well—not just in absolute dollar terms but as some multiple of economic loss.

Judyth Pendell, whose Bloomfield, Conn., firm, Pendell Consulting LLC, advises businesses that are concerned about legal reform, says that strong caps on punitive damages would be an important reform not just in themselves but because of "the shadow effect" that outrageous awards have on settlements.

Portland attorney Martin thinks that realistic caps are critical. She thinks that because juries can be swayed so easily by their sympathy for a plaintiff, the caps in the 1991 federal law are about twice as high as they should be. Martin notes that judges already have the power to reduce damages, "but they rarely, rarely do it with emotional-distress damages."

Says Pendell: "Judges have the ability to prevent and repair just about every problem in our courts today. There's nothing we could do that would be more valuable than to get good judges in place."

The way to get better judges, says the ABA's Joseph, is through "merit selection," in contrast to the elections that now prevail in much of the country. "That's something the business community has to be involved in," he says. "Elected

PHOTO: ©BOB RANSOM—BLACK STAR

It's easy *to avoid a lawsuit, insists plaintiffs' lawyer Mary Anne Sedey of St. Louis—just obey the law. ...*

judges cannot help but be influenced by the fact that somebody made a significant donation." Trial lawyers in particular have been criticized for their donations to judges' campaigns. (See "Attorneys' Rising Political Clout," Page 19.)

Some reformers target not elections so much as the voters' awareness of judges' records. The Judicial Evaluation Institute for Economic Issues, a nonprofit organization based in Bethesda, Md., is offering expertise and funding to several budding state efforts at systematic judicial evaluation. The idea is to review judges' records "from the point of view of free-enterprise values," according to the institute, "with a special emphasis on liability and litigation reform."

In the few states where judicial evaluations have played a part in elections, says John J. McMackin Jr., a Washington, D.C., attorney and institute board member, the results have been encouraging.

Ultimately, where employment law is involved, the reformers' goal is to make the public as a whole aware of the costs imposed by a legal system that sometimes seems like a black-robed version of a lottery, dumping millions of dollars on successful plaintiffs almost at random.

"We can't choose to simply settle down with the currently existing level of burden," says the Manhattan Institute's Olson. "Unless we do something, the burden is going to escalate considerably faster than the size of the economy. Now is the time to debate whether this is all a good idea."

To order a reprint of this cover package, including the story on Page 19, see Page 56. For a fax copy, see Page 42.

PHOTO: ©PATRICIA CORDELL

. . . but it's not that simple, *says Portland, Ore., defense attorney Chrys Martin. The emotional volatility of employment-law cases poses a real threat to business, she says: "If you get a bad jury, you can get killed."*

Attorneys' Rising Political Clout

Donations to judges' election campaigns by plaintiffs' attorneys are politicizing the judicial system and fostering abuse, critics say.

By Steve Bates

In the past decade, wealthy attorneys who represent plaintiffs have contributed more than $100 million to election campaigns across the country, becoming one of the most powerful forces in U.S. politics.

While a study by The State Affairs Co., a Reston, Va., firm that researches campaign finances, shows that much of the money has gone to the Clinton-Gore campaigns and to Democrats running for the U.S. Senate and House, it also shows that plaintiffs' attorneys have poured substantial sums into previously low-key state and local judicial races.

The contributions to judges' campaigns have been particularly large in the states—notably Alabama and Texas—where plaintiffs' lawyers typically win big punitive-damages awards in product-liability and other business-related cases. Critics say the donations by attorneys are making the judicial system too political and are fostering legal-system abuse.

PHOTO: MIKE CLEMMER

"A runaway verdict" *is a nightmare faced by businesses in some state courts, says John McMillan, chairman of a reform group in Alabama.*

In 38 states, at least some judges are chosen by election rather than by merit appointment. Appointment is the recommended method of the American Bar Association in Washington, D.C., and the American Judicature Society in Chicago.

In September, the ABA said it would study whether judges should hear cases involving attorneys or their clients who have contributed to the judges' election campaigns. ABA rules are not binding, however. Standards of judicial conduct usually are set by state supreme courts.

"An Underground River Of Money"

Lawyers and judges are not the only ones concerned about judicial ethics. A recent public-opinion poll in Ohio found that most people believe that judges' decisions sometimes are affected by campaign donations.

The full extent of the contributions of plaintiffs' attorneys to judges is almost impossible to measure. Prominent attorneys, their firms, their employees, their family members, and numerous political-action committees (PACs) that are set up and funded by them often make large numbers of small donations. PACs transfer funds among themselves repeatedly, further obscuring the cash flow.

"It's an underground river of money," says John Davis of State Affairs. "It's very hard to find. And it's absolutely legal."

In 1994, nearly $6 million was spent on a single state Supreme Court primary race in Texas. About $5 million was spent on a high-court campaign in Alabama in 1996, financing—among other things—a television ad depicting the eventual winner, Harold See, as a skunk.

Such war chests are approaching the amount of money raised for a typical U.S. Senate race, critics note.

Some candidates for judgeships receive more than 70 percent of their contributions from trial lawyers—many of whom argue cases before the same judges.

Clearly, the stakes are high. In Alabama courts, punitive-damages awards rose from $22 million in 1993 to $171 million in 1996, says Skip Tucker, director of Alabama Voters Against Lawsuit Abuse, a reform organization.

Large verdicts are not uncommon in states whose populations—and hence their juries—have large percentages of low-income and minority people. Tucker and some other advocates of legal-system reform say such jurors often are sympathetic to the claims of low-income and minority plaintiffs.

Attorneys for winning plaintiffs often collect more than 30 percent of the verdicts in fees, which can bankroll additional campaign contributions, note Tucker and other advocates of reform.

Mobilizing For Change

Many legal experts, business organizations, and citizens groups have mobilized not only to seek reforms in tort law—which affects suits seeking damages for alleged wrongs—but also to try to insulate judges from multimillion-dollar politics.

"Tort reform and a level playing field with the judiciary go hand in hand," says Ralph Wayne, president of the Texas Civil Justice League, a business group seeking limits on punitive damages and changes in the way judicial campaigns are financed.

Reform advocates point to incidents such as these:

■ Los Angeles lawyer Thomas Girardi, who has won hundreds of millions of dollars for plaintiffs, set up a foundation that chartered a ship for a recent Mediterranean cruise. *The Los Angeles Times* reported that the guests included several active and retired judges who have

heard Girardi's cases, most of whom reimbursed the foundation for the cost.

■ Justices of the Texas Court of Appeals not only have received substantial contributions from plaintiffs' attorneys in recent years but also have been treated to election-night victory celebrations at the offices of those attorneys.

■ Campaign-finance records show that plaintiffs' attorneys or their firms have made numerous contributions to justices of the Alabama Supreme Court while the firms had cases pending before the justices. At least one justice reportedly distributed handwritten requests for campaign funds—despite a nonbinding ABA ethics rule saying judges should not solicit money personally.

From 1990 through 1995, plaintiffs' attorneys, their law firms, and related PACs gave more than $27 million to state candidates for judgeships and other offices in just three states—Alabama, California, and Texas—studies show.

That's several times more than the largest oil and automobile companies gave to candidates for all offices in those states from 1990 to 1994, and it's more than either the Democratic National Committee or the Republican National Committee gave to candidates in all 50 states combined in those years, according to studies by State Affairs and the American Tort Reform Association.

"When you look at the dollars contributed and the timing, it's obvious that the trial bar is trying to buy judgeships," says Pat Rowland, executive director of the Product Liability Coordinating Committee, an Arlington, Va., umbrella group for organizations seeking product-liability reform.

Researchers say that at least two plaintiffs' attorneys and their firms—William Lerach of Milberg, Weiss in San Diego and Michael L. Climaco of Climaco, Climaco in Cleveland—have given more than $1 million to politicians in the past decade.

"There is no question that attorneys are now big time in the process," says George Landrith, vice president of the Washington-based National Legal Center for the Public Interest, which advocates a fair judiciary.

In Defense Of Contributions

Plaintiffs' attorneys generally defend contributions to judicial candidates as good government, though some say that the total amount of money being given is out of control.

SOURCES: AMERICAN TORT REFORM ASSOCIATION; THE STATE AFFAIRS CO.

"It has escalated into a money war," says William Utsey of Utsey, Christopher, Newton & Utsey in Butler, Ala., a former president of the Alabama Trial Lawyers Association and a generous donor to judicial races. But even giving money to a judge during a trial won't influence a judge's decision, says Utsey. "I don't believe that's ever bought a person in Alabama," he says.

"I'm sure it gives the public a bad feeling," says James R. Pratt of Hare, Wynn, Newell and Newton in Birmingham, the association's president and another campaign donor. He says the clients that he and other plaintiffs' attorneys represent typically can't afford to make political contributions themselves, whereas the companies being sued are often wealthy enough to do so.

"We're really the only voice that the common man has," says R. Gary Stephens, a trial attorney with the Houston firm Stephens & Stephens. He says plaintiffs' attorneys "can't even begin to spend what business has," noting that judicial candidates are beginning to get significant financial support from insurance companies and other business interests.

Fear Of Being Sued

Though the largest punitive-damages awards won by plaintiffs' lawyers are levied against big corporations, small businesses are affected as well. Fear of being sued prompts many small-business people to settle meritless cases—particularly in jurisdictions where plaintiffs' attorneys have virtually unbroken victory records in district or appellate courts.

"Businesses today will settle a case they know they should win, because they fear the possibility of a runaway verdict that could put them out of business," says John McMillan, chairman of the Alabama Civil Justice Reform Committee, a coalition of business interests and other organizations.

Grass-Roots Efforts

Small-business people have been at the forefront of grass-roots efforts to curb legal-system abuses and overpoliticization of the judiciary in several states.

The movement started nearly a decade ago in the Rio Grande Valley, where plaintiffs' attorneys come from other parts of Texas and from other states to file suits because judges and juries there historically have been highly sympathetic to their cases, says Rossanna Salazar, director of Texans Against Lawsuit Abuse. She says her group now has about 20,000 members, dominated by "small-business people concerned about the impact on their pocketbooks."

In California and several other states, a number of groups call themselves Citizens Against Lawsuit Abuse (CALA), based on the Texas group's model, says Sarah Cheaure, executive director of the 8,000-member Los Angeles-area CALA. "All these groups around the country have sprouted up with their own boards of directors, and they all do their own thing."

Changes have been slow to materialize. The Alabama Legislature has passed several measures limiting tort claims and campaign contributions to judges, but the state Supreme Court has undone them through a series of decisions, says McMillan of the civil-justice group.

Several states select appeals-level judges administratively based on merit and require that they stand for "retention" elections periodically. But few states are poised to copy that model.

Without substantial reform, says Davis of State Affairs, wealthy attorneys who represent plaintiffs will continue to make "investments in candidates who will defend the status quo." NB

Small Business Financial Adviser

Stock Market Faces An Uncertain 1998

By Randy Myers

It really was different this time. Defying skeptics and historical precedent, the U.S. stock market soared again in 1997, allowing the Dow Jones industrial average to post a gain of more than 20 percent for the third consecutive year. It was a feat never before accomplished.

Investors whose portfolios mimicked the Standard & Poor's 500-stock index of large-company stocks have now roughly doubled their money in that three-year period, a phenomenon that in the past has taken an average of seven years to accomplish.

Researchers at Lipper Analytical Services in Summit, N.J., say the average stock mutual fund—the most popular investment vehicle for many individual investors—earned 24.4 percent last year and has now posted average annualized returns of 25 percent for the past three years.

Despite the logical argument that the market can't go up forever, Wall Street analysts and money managers give stocks a better-than-even chance of advancing again in 1998, albeit not as dramatically and not without potentially volatile ups and downs.

They are cautious for good reason. Unlike last year at this time, when there were no significant threats on the market's immediate horizon, this year a potential sinkhole looms in the form of the widely reported economic crisis in Southeast Asia.

The fallout from that crisis, which sent Asian currencies and stock markets alike into a tailspin in recent months, hit these shores on Oct. 27. On that day, investors, who had become increasingly nervous about how the crisis would affect the U.S. economy, sent the Dow Jones industrial average tumbling 554 points. That was the Dow's biggest one-day point decline in history, although it ranked only 12th in terms of percentage decline—7.1 percent.

Too Soon To Bury The Bull

Although that sell-off on Oct. 27 presaged a tough fourth quarter—the average U.S. stock fund tracked by Lipper lost 1.5 percent from October through December—most analysts are loath to forecast the bull market's death just yet. If it does expire, though, they suggest that the most likely villain will be the Asian crisis and its detrimental impact on U.S. corporate profits.

"When Thailand's markets blew up and this problem began to spread, it made headlines but didn't impact major markets around the world," observes Henrik Strabo, man-

Randy Myers, formerly a writer and editor for Dow Jones & Co., Inc., is a financial writer in Dover, Pa.

Performance By Mutual Fund Category

With Dividends Reinvested Through Dec. 31

Type Of Fund	4th Quarter	One Year	Five Years*
	(Figures are percentages)		
General Stock Funds			
Capital-appreciation funds	-3.68	20.36	15.70
Growth funds	-1.15	25.30	16.82
Midsize-company funds	-3.41	19.63	15.45
Small-company funds	-4.97	20.75	16.74
Micro-company funds	-6.57	29.69	15.45
Growth and income funds	0.83	27.14	17.63
S&P 500 Index objective funds	2.72	32.60	19.74
Equity income funds	2.41	27.51	17.14
General Stock Funds Average	**-1.54**	**24.36**	**16.94**
Sector Stock Funds			
Health/biotechnology funds	-2.57	21.80	16.82
Natural-resources funds	-14.99	0.09	14.87
Environmental funds	-3.05	15.17	9.32
Science and technology funds	-13.45	9.63	20.76
Specialty/miscellaneous funds	-2.07	21.80	16.25
Utility funds	10.87	26.01	13.39
Financial-services funds	7.06	45.23	25.75
Real-estate funds	0.59	22.39	13.23
Telecommunications funds	-2.09	26.90	16.52
Sector Stock Funds Average	**-1.04**	**20.40**	**17.07**
International Stock Funds			
Gold-oriented funds	-30.19	-42.02	0.79
China-region funds	-29.91	-23.58	3.60
Global funds	-5.02	13.04	14.04
Global small-company funds	-8.91	4.54	15.32
International funds	-7.69	5.44	12.28
International small-company funds	-9.14	-0.27	11.65
European-region funds	-2.30	15.78	17.76
Pacific funds, excluding Japan	-28.59	-35.52	1.28
Pacific-region funds	-22.97	-27.63	3.42
Emerging-markets funds	-16.93	-2.38	7.05
Japanese funds	-15.44	-14.07	-0.05
Latin American funds	-12.13	25.27	11.47
Canadian funds	-21.16	-16.40	8.51
International Stock Funds Average	**-11.41**	**0.42**	**11.00**
All Stock Funds Average	**-4.12**	**17.62**	**15.86**
Mixed Equity Funds			
Flexible portfolio funds	0.54	18.69	13.28
Global flexible portfolio funds	-2.95	11.55	11.91
Balanced funds	1.15	19.00	13.26
Balanced-target maturity funds	0.81	12.87	9.60
Convertible-securities funds	-1.40	17.61	12.52
Income funds	1.67	16.38	13.19
Mixed Equity Funds Average	**0.41**	**17.67**	**12.97**
Domestic Long-Term Fixed Income	2.04	8.68	7.04

SOURCE: LIPPER ANALYTICAL SERVICES INC.

*Average change for each of the five years

CHARTS AND PHOTO ILLUSTRATION: GEORGIA LEIGH MCDONALD

ager of the American Century-Twentieth Century International Growth fund. "When the turmoil reached South Korea, a much larger economy, people started to get really concerned. I think we can live with a troubled South Korea. But the real question mark now is Japan, the world's second-largest economy. How bad a shape are they in?"

Early pronouncements from Wall Street economists focused on the notion that exports to the Far East represent a relatively small fraction of the U.S. economy, and thus it wouldn't be decimated by a slump in Asia. Strabo isn't forecasting catastrophe either, but neither does he believe we'll escape unscathed. "You can't take such a big part of the world that had been growing very fast and slam on the brakes without impacting other businesses around the world," he says. "That's just unrealistic."

U.S. investors who sought to optimize their returns by putting some of their money into international mutual funds last year have already suffered. According to Lipper, the average diversified international fund lost 7.7 percent of its value in the fourth quarter of 1997, leaving it up just 5.4 percent for the year.

Funds focused exclusively on Southeast Asia did much worse. The average Pacific fund, excluding Japanese funds, lost 28.6 percent in the fourth quarter and 35.5 percent for the full year. Japanese funds lost 15.4 percent in the fourth quarter and 14.1 percent for the year.

Market Gains Ahead?

If the Asian crisis doesn't knock the legs out from under the U.S. economy, the stage would appear to be set for moderate gains in the U.S. stock market in 1998, according to Jay Sekelsky, lead equity manager for the Mosaic family of mutual funds in Madison, Wis.

One strong reason: declining long-term interest rates, which in 1997 helped the average taxable domestic bond fund earn a total return of 8.65 percent. (Bond prices rise when interest rates fall.)

The interest-rate story is almost as compelling as the Asian story. The Treasury's bellwether 30-year long bond started 1997 yielding 6.64 percent, climbed to 7.17 percent by early April, then began a decline that took it to 5.92 percent at the end of the year.

By the first week of January, long-term rates had fallen as low as 5.73 percent, the lowest they had been since the 1960s (and for a brief period in the 1970s). Low interest rates encourage consumer spending and cut corporate borrowing costs, which helps corporate America and stock prices.

"Rates may not drop as rapidly in 1998 as they did over the last six months of 1997, but I believe we can keep the 30-year Treasury below 6 percent for the better part of the year," says Sekelsky.

While he suggests that the stock market was fairly valued at the end of 1997 relative to corporate earnings, he adds that continued low inflation and interest rates and modest corporate-earnings growth this year could produce returns of 5 to 12 percent in the stock market, in line with historical standards. (From 1926 through 1996, large U.S. stocks have produced a compound annual return of 10.7 percent, according to Ibbotson Associates, a Chicago-based research firm.)

Opportunities Abound

Attractive investment opportunities are available in selected pharmaceutical stocks, financial-services issues, food companies and distributors, and—after sharp sell-offs as a result of earnings disappointments in the fourth quarter—even some technology companies, Sekelsky says.

Tony Dwyer, chief market strategist with New York City-based investment-banking firm Ladenburg Thalmann & Co., also looks for respectable gains from the stock market this year. He says the Dow could hit and hold a high of about 8,900 during the year, after finishing 1997 at 7,908. But he thinks most of the gains could again be squeezed into the first half of the year.

Among the sectors of the market that Dwyer finds appealing are financial services and utility companies, both of which benefit from low interest rates. He also suspects that technology stocks may have bottomed out heading into the new year, making them ripe for an advance.

"One potential pitfall could be the brokerage stocks, because so many of them have been valued very highly already on the theory that there will be more consolidation [takeovers] in that industry," Dwyer says. He also forecasts that energy stocks, which tumbled in the fourth quarter, will remain under pressure in the absence of energy inflation.

While few market watchers expect bond prices to increase significantly in 1998, they generally agree that for buy-and-hold investors seeking steady income, current bond yields remain attractive relative to inflation.

Historically, long-term Treasuries have yielded about 2.75 percentage points more than inflation, which currently stands at about 2 percent. In early January, then, long-term Treasuries at 5.73 percent looked appealing indeed. ■

Small Business Financial Adviser continues on Page 24.

Stock Performance In The Fourth Quarter

Industry Group	Change In Value Oct. 1 To Dec. 31
Recreation—movies, sports	13.6%
Recreation—broadcasting	13.6
Utilities—electric	13.5
Food production	12.5
Savings and loans	12.2
Cosmetics—personal	11.4
Food—packaged goods	10.7
Credit	8.6
Personal services	7.9
Tobacco	7.9
Retail—food stores	7.6
Publishing	6.6
Retail—discount, drugs	6.6
Drug manufacturers	6.1
Real-estate investing	5.4
Insurance	5.3
Food—confections	4.7
Banking	4.3
Communications	3.3
NYSE Index	**2.8**
S&P 500 Index	**2.4**
Retail—apparel	2.2
Foods—meats, dairy	1.2
S&P Industrial Index	**1.2**
Investments	0.6
Electrical equipment	0.2
Dow Jones Industrial Average	**-0.5**
Retail—miscellaneous	-0.5
Utilities—gas, other	-0.9
Media General Stock Index	**-1.2**
Real estate	-1.4
AMEX Index	**-2.1**
Metals fabrication	-2.5
Freight, shipping	-2.6
Chemicals	-3.3
Multi-industry	-4.0
Business services	-4.4
Recreation—luxury	-4.5
Health	-4.5
Hotels, motels, restaurants	-5.5
Textile manufacturing	-5.6
Oil, refining, marketing	-5.6
Retail—department stores	-5.7
Automotive	-5.7
Rubber, plastic	-6.3
Machinery—light equipment	-6.5
Business data processing	-6.8
Nasdaq Index	**-6.8**
Housewares, furnishings	-7.1
Railroads	-7.2
Aerospace	-7.3
Business equipment	-7.8
Distillers—brewers	-8.9
Building	-8.9
Oil, natural-gas services	-10.8
Textiles—apparel	-10.9
Paper, packaging	-11.4
Machinery—heavy	-11.6
Oil, natural-gas production	-12.2
Precision instruments	-14.4
Metals—iron, steel	-18.4
Building—heavy	-18.8
Airlines	-19.0
Metals—nonferrous, coal	-20.2
Electronics	-21.5
Shoes, leather	-24.6
Metals—rare	-30.2

SOURCE: MEDIA GENERAL FINANCIAL SERVICES

EMPLOYEE SAVINGS

Stocks Increase Lead As Top 401(k) Investment

Sometime this year, total assets in the nation's 401(k) retirement savings accounts are expected to exceed $1 trillion for the first time. Where is all that money being invested?

Surveys show that 401(k) plan participants increasingly are shifting away from the safety of guaranteed or fixed-rate investments and turning to stocks—where both the potential returns and the risks are higher.

At the end of 1996, 49 percent of 401(k) assets were invested in stocks (stock mutual funds and the stock of employees' companies), according to *1997 Marketplace Update*, an annual report published by Access Research Inc. (ARI) of Windsor, Conn., a division of the Spectrem Group of San Francisco.

That 49 percent share far exceeds the 20 percent invested in guaranteed or stable-value investments, such as guaranteed-income contracts and other fixed-rate funds, and the 14 percent invested in balanced-fund investments, which blend stocks and bonds to minimize risk. The remaining 17 percent was spread fairly evenly among money-market, bond, and other investment funds. (See the accompanying chart.)

From 1990 to 1996, 401(k) assets invested in stock mutual funds rose to 26 percent of the total from 10 percent, ARI's analysis shows. Guaranteed or stable-value investments in 401(k) plans declined by more than one-third, to 20 percent from 32 percent, over the same period.

Many experts say this is exactly how most workers should be allocating their 401(k) retirement investments, especially those who are many years away from the time when they may need the money for retirement.

How 401(k) Assets Are Invested

	1990	1992	1994	1996
Stock Funds	10%	14%	19%	26%
Stock In Employee's Company	26	24	23	23
Balanced Or Asset-Allocation Funds Of Both Stocks And Bonds	12	13	14	14
Guaranteed-Interest Or Stable-Return Investments	32	29	25	20
Bond Funds	5	6	7	7
Money-Market Funds	9	8	7	5
Other	6	6	5	5

SOURCE: ACCESS RESEARCH DIVISION OF THE SPECTREM GROUP

Since 1926, investments in large-company stocks in the United States have produced an average annual total return of 10.7 percent, compared with 5.1 percent for long-term bonds, according to Ibbotson Associates, a Chicago research firm. The averages include periods of recession, when most stock investments decline in value.

A 401(k) account "is retirement money, which means it will be 10, 30, maybe even 40 years" before most people need it, notes Paul Yakoboski, a research specialist for the Employee Benefit Research Institute in Washington, D.C. "Most financial advisers recommend that people have a healthy exposure to equities [stocks] if they're in it for the long haul."

Yakoboski suggests that 401(k) investment behavior reflects the information that participants are given by their retirement-plan providers. Such investor-education materials generally note the strong historic returns from stocks and the benefits of asset diversification.

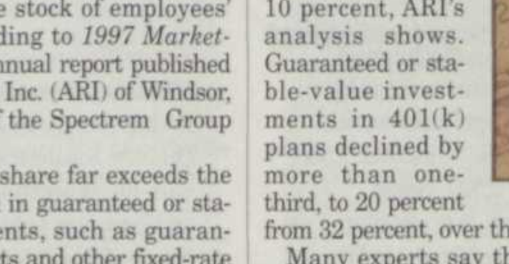
According to the ARI report, employers offered an average of 6.3 investment choices to 401(k) participants in 1996. That's twice the legal minimum established by Section 404(c) of the Employee Retirement Income Security Act. ERISA requires companies to offer at least three investment choices as a way to diversify risk. The 404(c) rules exempt companies from liability for 401(k) investment losses if they give participants "control" of their accounts, enough information to make "informed" investment decisions, and a choice of investments.

—Stephen Blakely

THE IRS

Using Private Services To Deliver Tax Returns

Every procrastinator knows you can mail your tax return on the day it is due and the IRS will still consider it to be filed on time, even if it arrives days later. This "timely mailed as timely filed" rule used to apply only to returns delivered by the U.S. Postal Service.



Now taxpayers have a choice of four private services to deliver last-minute returns and still meet the "timely mailed" rule. Only certain types of services, however, at each of the following companies meet the "timely mailed" requirement.

Airborne Express: Overnight Air Express Service, Next Afternoon Service, and Second Day Service.

DHL Worldwide Express: DHL Same Day Service and DHL USA Overnight.

Federal Express: FedEx Priority Overnight, FedEx Standard Overnight, and FedEx Economy (two-day service).

United Parcel Service: UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, and UPS 2nd Day Air A.M.

Any other services provided by these companies can be used to deliver your returns but will not meet the "timely mailed" requirement for a return filed on or immediately before the due date.

Many taxpayers don't realize these alternatives have been available for almost a year. That's because IRS Notice 97-26 announcing the private-delivery options was not issued until April 10, 1997, long after the March 15 corporate filing date and just five days before individual returns were due.

For more information on how to obtain written verification of the "mailing" and delivery dates of tax returns handled by private services, call Airborne at 1-800-247-2676, DHL at 1-800-345-2727, FedEx at 1-800-463-3339, or UPS at 1-800-742-5877. Or you can do business as usual and join the stampede at the post office on the filing date.

Until the word gets out on the private-delivery options, millions of taxpayers will likely continue to send their returns by certified mail and wait weeks for the return receipts verifying their tax returns were "timely mailed as timely filed."

—Gloria Gibbs Marullo

The author is a CPA and business writer in South Bend, Ind.

CAPITAL GAINS

Improved Tax Break For Small Firms

A little-known break on the capital-gains tax on sales of small-business stock is getting more notice since Congress improved it in the Taxpayer Relief Act enacted Aug. 5. Tax experts say the added attention to the break is important for business owners who might otherwise overlook a good tax-saving opportunity.

Until recently, the tax break was "a real unsung hero. I don't think many people [were] aware of it at all," says Tom Ochsenschlager, a partner in the Washington, D.C., office of accounting firm Grant Thornton LLP.

The original provision, as enacted Aug. 10, 1993, entitles individuals to what is in effect a 14 percent capital-gains rate on the sale of certain small-business stock if the stock was purchased after that date and was held at least five years. The 14 percent rate is 6 percentage points below the new long-term rate of 20 percent, which applies to capital gains on stock held longer than 18 months.

A stock qualifies for the special capital-gains treatment only if it is from a C corporation that is engaged in an active business and has gross assets of no more than $50 million. Some service-related professions are excluded, however; among them are health care, law, engineering, accounting, and financial services.

The intent of the tax break was to get more outside capital flowing into small companies, tax experts say, but investors balked at having to hold the same stock for five years to get the lower capital-gains rate.

That concern was addressed by the 1997 Taxpayer Relief Act. It includes a "rollover" provision that requires only that a stock purchaser keep his or her money invested in any qualified small-business stocks for five years to be eligible for the 14 percent capital-gains rate. Under this provision, a stock can be sold within the five-year window as long as the principal and any gain are reinvested in another qualified small-business stock.

Ochsenschlager notes that small-business owners who started companies after Aug. 10, 1993, and who have invested heavily in their firms are eligible for the tax break on the stock they hold. This point is especially important for planning purposes with the approach of the first five-year mark—Aug. 10, 1998.

"If you sell your business before five years is up, you're in effect paying more tax than you have to," Ochsenschlager says. "It's critical that if someone made an investment after [the law was enacted], they try to be careful about watching for the five-year window."

The 1993 law specifies that a taxpayer achieves the 14 percent rate by excluding 50 percent of the capital gain and paying a rate of 28 percent on the rest.

—*Joan Pryde*

EMPLOYMENT TAXES

IRS Provides Guidance On Independent Contractors

The Internal Revenue Service has simplified its approach to determining whether companies have properly classified workers as independent contractors.

The agency now sends a one-page document titled "Independent Contractor or Employee" to businesses selected for employment tax examination. The document, officially known as Publication 1976, outlines the three so-called safe-harbor requirements that employers must meet to comply with independent-contractor rules. The requirements:

- The employer is treating certain workers as independent contractors because that's how it is done by a significant portion of the industry in which the company operates.
- The employer's independent contractors do not perform essentially the same tasks as regular employees.
- The employer faithfully files Form 1099-MISC to report wages earned by an independent contractor whenever the amount exceeds $600 in a year.

Failure to meet any of the three safe-harbor requirements can trigger a more rigorous IRS audit of a company's independent-contractor arrangements.

Employers have an incentive to classify workers as independent contractors because "it costs more to have employees rather than independent contractors," says tax attorney Frederick W. Daily, author of *Tax Savvy For Small Business* (Nolo Press, $26.95).

An employer who hires an independent contractor, Daily explains, does not have to withhold federal or state income taxes or pay workers' compensation premiums, unemployment taxes, or the employer portion of the Social Security and Medicare taxes.

However, if an employer is caught misclassifying a worker, says Daily, the IRS and state authorities "can go back at least a year and make you pay all the back taxes and penalties."

This is where the new IRS publication comes in handy. It explains how to qualify for Section 530, known as the independent-contractor safe-harbor provision, says tax attorney Stephen Fishman, author of *Hiring Independent Contractors* (Nolo Press, $29.95). "If you meet the requirements, the IRS can't impose penalties or assessments for misclassification of workers," he says.

Because she met the safe-harbor requirements, Susan Wight, president of Susan Wight Graphic Design in Berkeley, Calif., avoided an IRS audit. Wight was able to document that she had a number of other clients, controlled her own work hours, supplied her own equipment, and had her own place of business. This satisfied the IRS caller.

You can get a free copy of IRS Publication 1976, "Independent Contractor or Employee," by calling 1-800-TAX-FORM (1-800-829-3676). It is also available at the IRS site on the World Wide Web, *http://www.irs.gov*.

—*Peter Weaver*

The author is a business writer in Bethesda, Md.

MANAGING

Coming To Grips With Growth

Expanding the firm doesn't simply mean the same old problems on a grander scale; it means managing new challenges.

By Sharon Nelton

PHOTO: T. MICHAEL KEZA

Expansion means *mastering a business all over again, according to Steve Appel, left, and Lee Whitehead, owners of Nouveau Contemporary Goods, an eclectic gift and furnishings store in Baltimore.*

"This is such a great store!" customers often remark when they first explore Nouveau Contemporary Goods, a colorful Baltimore emporium that sells everything from quirky greeting cards to hip furniture.

Owners Steve Appel and Lee Whitehead smile warmly at the compliments. Little do the customers know that behind the smiles, the partners are, in Appel's words, "nervous wrecks" a lot of the time.

In 1986, not long out of college with degrees in graphic arts, Appel and Whitehead started with a tiny but kicky gift store in a suburban retail center in Savage, Md. Within a year, they had moved the shop to a 1,000-square-foot space—more than triple the size of the first location—on Charles Street in bustling downtown Baltimore.

They still had to support themselves with jobs on the side—Appel as a waiter and Whitehead as a picture framer. In the early '90s, as Nouveau slowly grew and started to turn a small profit, they were able to quit their other jobs.

They took on additional space six years ago, and in 1996 they seized an opportunity to expand into a newly vacated adjacent area. Now the store covers 6,500 square feet. Since 1996, the number of their employees has increased to 10 from four, and their sales for 1997 reached $1.2 million, up from $720,000 the previous year. The partners expect sales eventually to reach $3 million.

How do Appel and Whitehead feel about all this expansion? Just as terrified now as they were when they started out 12 years ago. "It hasn't gotten any easier," says Appel. "I think it's gotten a lot harder."

They still struggle with inventory and payroll. They now have staff positions they never had before, like a full-time shipping-and-receiving employee and a full-time interior designer. They're still having trouble delegating responsibility and control. They're never out of debt. And their retail consultant, says Appel, has been exhorting them to "get a delivery service. *Get* a delivery service!"—instead of using their own employees and van.

They think it would be fun to have another store—in the Georgetown section of Washington, D.C., perhaps, or in Rehoboth Beach, Del. But they know they haven't come to grips with the growth they've experienced since 1996. "I think we really need to master this business because we don't have it mastered at all," says Appel.

Like Appel and Whitehead, most entrepreneurs learn that success as a business owner doesn't mean you can finally sleep at night. Expanding a company doesn't just mean grappling with the same problems on a larger scale. It means understanding, adjusting to, and managing a whole new set of challenges—in essence, a very different business.

A growth spurt can produce a company that's much more complex—one that needs much more sophisticated management and an infrastructure that it probably never had.

Roger Miller, president of DependiCare, a Broadview, Ill., supplier of medical equipment for home health care, says that when his company's revenues were $1.5 million a year, it was easy to be hands-on and do without "a lot of systems, processes, and procedures." But when DependiCare, now a $12 million company, reached $6 million to $8 million, things changed. For Miller, there was "a big jump in complexity of the business from that point on. You need systems, you need processes, you need computers. If you double the size of the company, the number of bills you have goes up by a factor of six."

Miller says he also found the need to be strategic. "When you're a $1.5 million company," he says, "you don't need to have

strategy. When you're $8 million, you'd better have strategy. You'd better be thinking down the road a little bit."

Moments Of Panic

Many entrepreneurs find they know as little about managing a larger company as they did about starting a business. Patricia D. Creedon, president of Creedon Controls Inc., an electrical contractor in Wilmington, Del., says: "There are times I have moments of just sheer panic. Where am I going to get the money? How am I going to cover the payroll on that? How am I going to get the job done?"

But they gather the courage—and often some outside help—to see them through.

Creedon, for example, almost gave up on her fast-growing business when it hit the five-year mark in 1994. She was working out of the basement of her home, she says, and "I was very isolated. I was plodding away on the day-to-day grind of the business, and I was worn down. I was tired. I was cash-poor. I had a lot of receivables due me but not coming to me. I really thought I might have to close the doors."

But she was persuaded to persevere by Edward H. Schneider, a Wilmington College business teacher and volunteer consultant with the U.S. Small Business Administration's SCORE (Service Corps of Retired Executives) program. He talked Creedon into writing a business plan, and he used it to show her the progress she was making: gross receipts that were doubling or tripling every year, improved debt-to-equity and other ratios, and positive comparisons of her company with other businesses.

"I realized that although the financials weren't what I wanted them to be, they were telling a great story," says Creedon. Armed with her business plan, she persuaded her bank to double her credit line to $100,000.

Creedon expects the final tally to show she did $6 million to $7 million worth of business in 1997, and the company is working with clients such as General Motors Corp. and Chrysler Corp. In the spring, she was named by the SBA as business person of the year for Delaware.

Growing Pains

Jim Rice of Pro-Fab, Inc., an Oklahoma City precision-machining company that serves the aerospace and defense industries, provides a textbook case of the difficulties of growth. Rice started the company in his garage in 1987; by 1991, it had 18 employees and "was suffering from growing pains and economic woes," he says. Invoices weren't being paid, there was no formal accounting system, and the company's bankers were getting restless.

Rice's strength was in manufacturing, not administration. He hired a financial consultant, Phil Engle, who set up reporting and accounting systems that satisfied bankers and enabled the company to bid on jobs more knowledgeably. Rice was freed to concentrate on manufacturing, customer satisfaction, and obtaining new contracts.

PHOTO: ©TODD BUCHANAN

Complexity *accompanies growth, says Roger Miller, president of DependiCare in Broadview, Ill.*

Today the company has 160 employees, up from 100 in 1996, and sales were expected to reach $18 million for 1997, up from $11 million in 1996. Profitability has continued to increase, says Rice. The firm's clients include Northrop Grumman Corp. and The Boeing Co.

Pro-Fab was named a 1997 state honoree in the Blue Chip Enterprise Initiative, a program that recognizes entrepreneurs who have dealt successfully with significant challenges. The program is sponsored by Massachusetts Mutual Life Insurance Co. (known as Mass Mutual—The Blue Chip Company), the U.S. Chamber of Commerce, *Nation's Business*, and "First Business," the Chamber's syndicated morning business-news television program.

Spinning Out Of Control

In Spokane, Wash., Doug Smith says he and his wife, Jill, "got a hangover" from the rapid growth that their specialty food company, Buckeye Beans & Herbs, Inc., experienced in the first half of this decade. The business was spinning out of control. Its sales were growing—50 percent from 1994 to 1995 alone—but its profit margins were declining. The frustrated owners took steps to regain control. They curbed sales growth, eliminated customers that didn't contribute to the bottom line, and hired a chief financial officer.

As a result, revenues dropped to about $7 million in 1997 from $8 million in 1996, but profit margins rose. The company, also a Blue Chip honoree, is again poised for growth.

In retrospect, the Smiths say, they had expanded their market beyond its optimum level. Their core customers had been gourmet retailers, department stores, and upscale grocery stores, but they also were selling to mass merchandisers and big discount stores, where "we had great volume but very low margins," Doug says. In addition, they were encountering increasing competition from large corporations such as Quaker Oats and Hormel Foods.

"We refocused on our core markets and let the big guys go after the big volumes," says Doug.

Growth has its obvious upsides. It spurs job creation. It creates a stimulating and exciting environment within a firm. It creates opportunities for the business founder and others in the company to become wealthy.

But growth has its downsides, too, and they are fairly predictable: When growth is too rapid, chaos can prevail. A company's profit margins may drop, as the Smiths learned. A business may outgrow the skills of its leader, its employees, and its advisers. It may outgrow its bank. Entrepreneurs and employees alike become stressed out trying to keep up with the demands of expansion.

The Smiths recall what it was like when they moved into a new facility in 1993 and found they weren't running a little mom-and-pop operation anymore. "We realized we needed more people to fill the orders, to take the orders, to package the product, and so forth," says Doug. The company needed more structure and control than the Smiths were used to providing. "We just couldn't do it all, as we had done in the past, and we didn't have the people in place yet," says Doug.

Electrical contractor Creedon readily talks about the terror she has felt as her company has grown. "I mean, our first mil-

PHOTO: T. MICHAEL KEZA

When she wrote *a business plan, Pat Creedon saw that Creedon Controls, an electrical-contracting firm in Wilmington, Del., was on the right path.*

lion-dollar job was really palm-sweating, heart-stopping." It was in New Jersey—her first job outside Delaware—and she feared there might be circumstances she could not control. For example, she worried that the people she would hire in New Jersey might not have the same solid work ethic as those she knew in Delaware.

"I had fear about just the size, the length, and duration of the project," she recalls.

A lot of the anxiety, says Creedon, "is fear of the unknown." But she has a motto that she takes from the title of a book by Susan Jeffers: *Feel The Fear And Do It Anyway.*

As the leader of a company that is moving from one level to the next, you need to consider taking action in three major areas:

Getting Help

Entrepreneurs might know their industry and their product or service very well, "but they don't necessarily understand the business of business," says Lorraine H. Warshaw, president of BusinessNext International, a Reston, Va., management consulting firm that helps emerging growth firms and closely held companies. She says it's critical to become educated about business or to hire staff members or advisers with business expertise.

All the business owners interviewed for this story have relied on outside assistance in one form or another to help them manage their companies' growth. The Smiths hired a consultant (a "pro-sultant," Jill says—not as "negative" as "con-sultant") to bring in an outside view and help them look at the strengths and weaknesses of their staff, suggest ways to restructure the organization, and improve communication.

Appel and Whitehead at Nouveau Contemporary Goods rely on a retail consultant. Creedon of Creedon Controls

Questions To Ask Yourself

As you consider whether to expand your company or as you prepare to enter a growth spurt, there are some questions you should ask yourself, say business owners and experts on business expansion. Those questions include:

Am I a good manager of people?
As a business grows, you must increasingly assume a leadership role and give up the hands-on work that possibly motivated you to go into business for yourself in the first place.

Am I willing to allow the business to become what it needs to become regardless of my own needs?
In other words, says Lorraine H. Warshaw of BusinessNext International, a management consulting firm in Reston, Va., can you disengage yourself? That means "separating yourself from the company, realizing that it's an entity unto itself, with its own personality, its own needs." You have to be prepared, she says, "to not so much step back but step above the company, to take a megaview of it."

Am I willing, ready, and able—emotionally, physically, and mentally—to put in the kind of time and energy that a growth spurt requires?
"When you go to the next level, you've got to pick up the pace again," says Warshaw. It means being able to "rekindle the passion" that you had when you started the business.

What personal price do I have to pay?
Jim P. Geimer, a management consultant in Vernon Hills, Ill., says family life may suffer because a growth spurt consumes so much of an entrepreneur's time. Stress may be another price to pay.

Do I know enough about running a much more complicated organization to be successful with the transition?
"Getting larger isn't just doing more of the same. It gets much more complex," says William H. Durmer, a marketing-strategy consultant based in Wadsworth, Ill. You will have to consider the essential skills and how to master them.

Am I able to trust others to make good decisions and run the day-to-day operations of my business?
"That trust is critical, and that's the hardest thing for [business owners] to develop," says Warshaw.

What am I looking to grow—profitability, or revenue and sheer size?
"They don't necessarily equate," says Warshaw. "You can have higher revenue and less profitability if you don't manage [growth] well."

What is my competition doing that could take away my business?
"If my competition is aggressive enough that their marketing and sales efforts are going to take my business," says Durmer, "then I have to grow."

turned to SCORE volunteer Schneider. Miller of DependiCare looks to his TEC group. TEC—The Executive Committee—is a San Diego-based organization that forms and runs groups of CEOs throughout the country. Participants, who pay fees to belong to TEC, meet regularly, functioning as sounding boards and advisers for one another.

Exploring Your Role And Preparing To Change It

Consultant Warshaw says that when she finds that a business is not doing well, it's often because "the owners don't realize that their job is changing. They don't want it to change."

In the early years, from the time you start a business until it stabilizes, your role is probably hands-on. You have few employees; you're doing lots of things yourself. But when a company experiences its first real surge of growth, it's time for you to change what you do. You need to become a CEO—that is, the leader, the strategic thinker, and the planner—and to delegate day-to-day operations to others.

"The CEO cannot be in charge of operations," says William H. Durmer, a marketing-strategy consultant in Wadsworth, Ill., who leads two TEC groups, one of them Miller's. "The CEO has to be in charge of tomorrow," Durmer says. "He has to have other people who are in charge of today."

Creating An Infrastructure

At this stage of growth, it's probably time to professionalize and put systems in place. A simple example: Growth means there will be many more vendors and thus many more bills coming in and more checks to write.

Electrical contractor Creedon has been writing all the checks herself, but now there are so many that she has to create a system—or let someone else create it—for paying bills.

A company may need new technology, new inventory systems, and new communications systems to meet the requirements that come with growth.

Surviving a growth spurt can be difficult. If you thought the first stage was rough, says Warshaw, the next level "is like the biggest roller coaster you could ever want to be on, because you've got way more to lose at this stage than you do at the beginning."

Business owners and experts offer these tips for coming to grips with growth:

Know what it's going to cost you.

Plateaus can be comfortable. You have cash in the bank, things aren't so hectic, and no one is calling to complain that they haven't been paid. But when you're in a growth spurt, warns Pro-Fab's Rice, cash levels go down and stress levels go up. If you have to seek investors to fuel the growth, you may have to give up some ownership, says Durmer.

Pay particular attention to cash.

"Cash is king," says Durmer. "Don't reinvest all of your profitability into growth. You must invest some of it in reserve capital. Because as you grow, you will hit bumps. There's absolutely no doubt."

Your reserves need not be all cash, he says; they can be something—such as excellent receivables—that you can turn into cash quickly.

PHOTO: ©DAVID FITZPATRICK

A growth spurt *causes some discomfort, warns Jim Rice of Pro-Fab, Inc., an Oklahoma City precision-machining company.*

Don't feel that you're alone.

Many entrepreneurs say they feel isolated, but Miller of DependiCare says, "Everybody who owns a business has the same kinds of issues." He encourages finding a group of peers with whom you can discuss problems.

Step back.

When things seem out of control and you're feeling stressed out and frustrated, it's time to distance yourself and really think about what's happening.

"There are times when I felt like there were 30 things going on and I had control over none of them," says Miller. When that happens, he says, he steps back, takes a deep breath, and says, "OK, what are the two or three really key things? I'm going to get control over those." Once those two or three things are under control, he moves on to the next two or three. "And sooner or later, the things come into line."

Staff up ahead of the need.

"If you're growing rapidly, overhire for positions because you're going to grow into them quickly," advises Durmer.

You may think you can't afford to hire a chief financial officer or a chief operating officer, but you may be at a point where you can't afford not to, says Durmer.

"One of the smartest things we did was hire a CFO," says Buckeye Beans & Herbs' Jill Smith. The Smiths resisted for a long time because Doug was good with numbers. But the CFO provided them with more-useful financial information than they had before and strengthened their cash-flow management.

Use your time effectively.

"Time is the single biggest resource that entrepreneurs have," says Schneider. His SCORE client, contractor Creedon, likes to do the purchasing and perform other hands-on jobs, but he has urged her to give them up. "If you've only got eight hours a day," he says, "you want to do something that is going to be worth $1,000 an hour or $100 an hour versus something that is worth only $10 an hour."

Take a hard look at customers.

Like Buckeye, you may need to let some customers go because they're not contributing sufficiently to your bottom line.

It's important to understand that there are customers you don't want, Schneider says. Some take too much of your time for what you charge, for example, or they are outside the area you want to work in and will distract you from your goal.

Bite the bullet with employees.

Some employees may not be able to grow with the company. You may have to let them go, despite their intense loyalty and the fact that they have been with the com-

pany since its inception. This will be painful.

"I've spent many hours helping an owner make the decision to fire his or her first employee," says consultant Warshaw. "Often that first employee is a major roadblock to growth."

She encourages owners to find other jobs in the company for employees who haven't kept pace, but if that doesn't work, she says, you have no choice but to terminate them.

Plan for growth.

Early in the life of Pro-Fab, says Rice, it seemed like growth was "dragging me along rather than me pushing it."

You can't always see a growth spurt coming, warns Miller. But if you can—for example, if you know you have six new accounts coming in—then you can consider the problems that growth is going to create, the needs you have as an organization to service the accounts, and what you ought to be doing to get ready.

"I've got to mentally go through and get the next step done and then actually go back and physically do it," says Rice. He tries to imagine what problems will be created when he goes to the next step so he won't be surprised by them. "Typically, what I've found is if I prepare myself well enough, doing it is actually a lot easier than thinking about doing it."

Understand the effects of growth on employees.

Growth "stresses everybody," says Miller. And while growth may sound great to you as an owner, it won't sound great to employees in the trenches unless you've sold them on your goals. "It doesn't matter to them that we did 100 more deliveries this month than we did last month," says Miller. "All that meant to them was that they had to work extra overtime and they would rather have been home with their kids."

When things are "really crazy" because of a growth spurt, says Miller, he tries to increase his communication with employees "so that everybody knows that things are crazy and everybody understands it and there's no hidden fear."

PHOTO: ©CRAIG SWEAT

Hiring John O'Keeffe, *center, as chief financial officer helped Doug and Jill Smith get their Spokane, Wash., company, Buckeye Beans & Herbs, back under control.*

This helps the employees acknowledge their feeling that things are out of control; then, Miller says, he tells them, "Let's try to look at one thing at a time and get control of it."

Often it's the uniqueness of their creation that motivates entrepreneurs to survive growing pains. Whitehead of Nouveau Contemporary Goods says he can go into stores in New York City or San Francisco and say, "Whoop! We still have them beat."

From the first day, says partner Appel, customers have said: "I've never seen a store like this. I really love your store." When you hear that all the time, "that keeps you going."

When business owners tell Miller they grew 45 percent in a year, he tells them how bad he feels for them. "We grew 40 percent one year," he explains. "I don't want to do it again. It was incredibly stressful on everybody." Some years, he adds, the firm could have grown by 60 percent. But he's happy with growth of 15 to 25 percent because it's controlled and manageable.

"Growth manages you if you let it," he says. "The challenge is to manage the growth." NB

Wisdom And Support

When your company is headed for fast growth—or already is experiencing it—you need all the support and wisdom you can get. Resources are readily available.

SCORE, the Service Corps of Retired Executives—sponsored by the U.S. Small Business Administration—is a popular source of free counseling by experienced business volunteers. To be put in touch with the chapter nearest you, call 1-800-634-0245. Or you can access SCORE's site on the World Wide Web at *www.score.org*.

Many business owners swear by TEC—The Executive Committee. TEC is a San Diego-based organization that brings together small groups of CEOs in cities across the country and runs their monthly meetings. Under the guidance of a seasoned consultant, the CEOs meet in confidence to discuss problems, learn from one another, and hear speakers. Each member also meets one-on-one with the consultant once a month.

The fee for belonging to a TEC group is $8,700 a year for a CEO whose company's annual revenues are $3 million or more; the fee is slightly less for CEOs of companies with revenues of $750,000 to $3 million. For information, call 1-800-274-2367.

Entrepreneurs frequently find peer groups and other assistance in trade associations and local chambers of commerce. Colleges and universities often offer help to growing businesses.

A new book, *Running And Growing Your Business*, by Andrew J. Sherman (Times Books, $25), offers strategies for growth and raising capital.

Larry King.

Alive.

Los Angeles. September. Larry King is in the middle of planning a wedding. It hits him. A feeling which feels exactly like a heart attack.

And he knows what a heart attack feels like; ten years ago, he had one. Back then, Dr. David Blumenthal and Dr. Wayne Isom at The New York Hospital-Cornell Medical Center saved his life. That's why Larry King wanted to get back to New York fast.

He and his new wife (they got married in the CCU in Los Angeles) flew medevac 3000 miles to New York. There, Dr. Isom stood by as Dr. Alex Shaknovich performed an angioplasty.

A day later Larry King was back on his feet. A week later he was back on TV. Now, Larry King says he feels the best ever. In gratitude for getting back his good health, he's created the Larry King Heart Foundation to help others receive the quality care he did.

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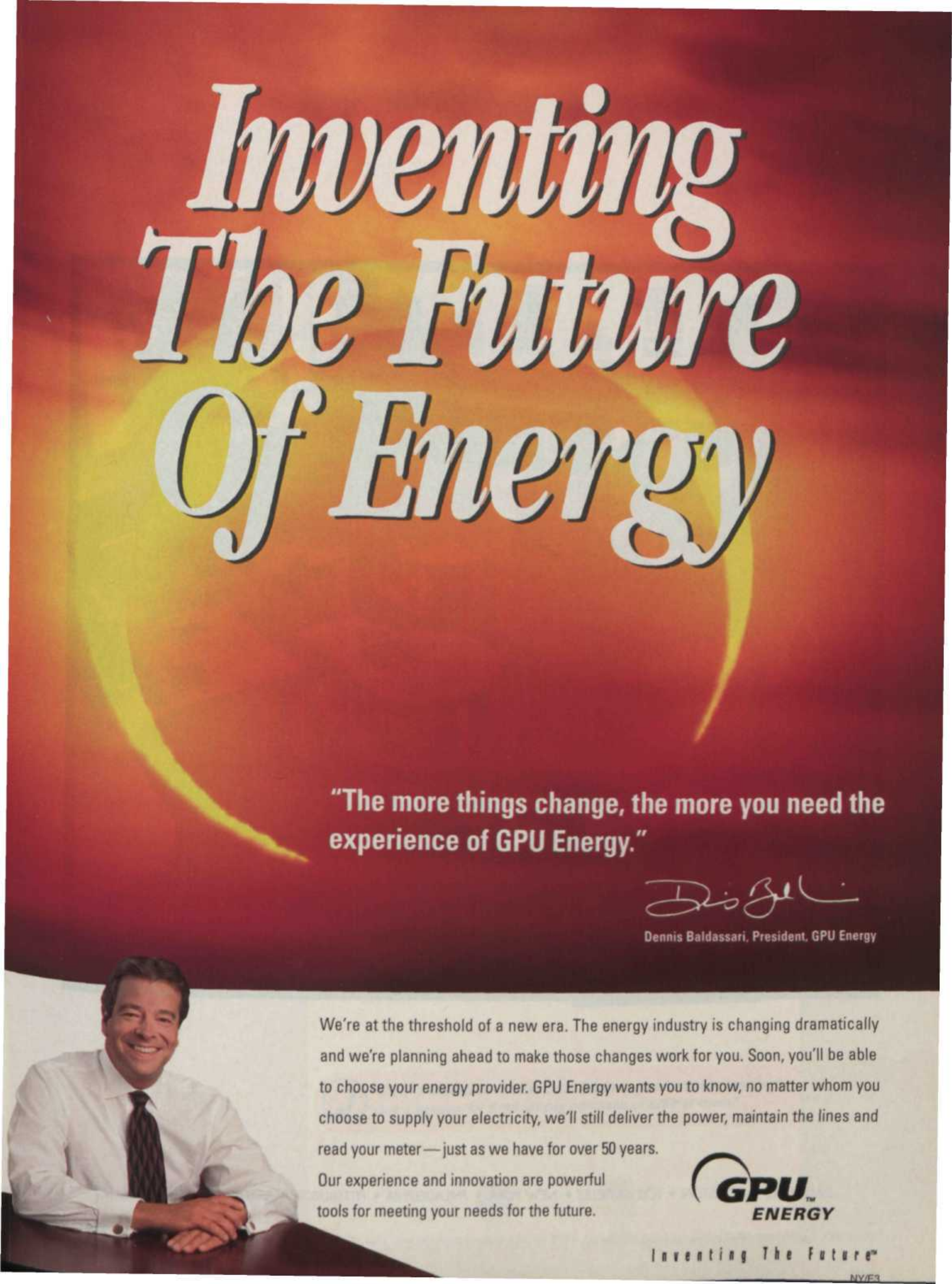
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GPU ENERGY
Inventing The Future

The EFFEKTIV T-leg individual desk, shown at right ($585), storage island ($610), and MAXIMAL chair ($209). Assembly required.

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TAXES

Reform Bill Would Rein In The IRS

Congress has heard the message of the agency's critics, who say change can't come soon enough.

By Joan Pryde

In 1981 the Internal Revenue Service notified optometrist F. Barry Jacobs that he had failed to pay two years' worth of payroll taxes for himself and his three employees. The agency billed him for $11,000 in back taxes and penalties. Jacobs, who says he had never missed a payment, was flabbergasted.

PHOTO: ©FELIX ADAMO

A mix-up *with employer identification numbers led to a long battle with the IRS, says Nancy Jacobs, bookkeeper for the optometry business of her husband, F. Barry Jacobs.*

Nearly 17 years later, the case still isn't closed. Although in 1996 the IRS apologized in writing to Jacobs and his wife, Nancy, for any inconvenience it may have caused them, the Jacobses have not yet received a full refund of the money that the IRS seized during the long payroll-tax dispute.

Nancy Jacobs, bookkeeper for her husband's Bakersfield, Calif., optometry business, says the most disturbing part of the couple's ordeal was the IRS's accusatory attitude. "IRS employees were not interested in listening to us, much less in investigating our assertions" that the taxes had been paid, she says. "They assumed we were guilty and we owed the money."

Equally disturbing to IRS critics is that the Jacobses' case is not unusual. A parade of witnesses, including Nancy Jacobs, told a Senate committee this past fall that they too had fallen victim to errors and shabby treatment by the IRS.

Congress got the message: The IRS needs major reforms. And this is the year that Congress is likely to pass reform legislation.

The House approved an IRS-overhaul bill shortly before adjourning in November. The Senate is expected to pass its own measure early this year.

Critics say there's plenty to be fixed: IRS agents who hound taxpayers into settling cases; outmoded computers that fail to keep proper records; poorly trained auditors; a system that assumes guilt; and a lack of help from IRS officials when disagreements arise.

The House's IRS-reform legislation aims to fix these problems by:

- Creating an outside board of directors to oversee management of the IRS.
- Mandating an upgrade in the agency's computer systems.
- Adding more than two dozen provisions to strengthen taxpayers' rights in dealing with the IRS.

The reform legislation reflects recommendations of the National Commission on Restructuring the IRS. The commission, created by Congress in 1995, issued a 200-page report this past June suggesting ways to improve the agency.

Thomas J. Donohue, president and chief executive officer of the U.S. Chamber of Commerce, says IRS reform can't come soon enough. "It is critical that the business community and all taxpayers keep up the heat on the president and Congress until the name 'Bill Clinton' is firmly affixed to substantive IRS reform," Donohue says.

Confusion Over Numbers

The Jacobses' battle with the IRS illustrates a lot of what critics say is wrong with the agency. The couple had closed an optometry practice in Stockton, Calif., in 1976 and opened a new one in Bakersfield in 1979.

Their troubles began when they made the mistake of applying for a new IRS employer identification number, not realizing that they should have continued using the number obtained for the Stockton practice. Instead of catching the Jacobses' mistake, the IRS issued them a new number. To compound the error, the new number had already been assigned to another employer.

During the next two years, 1980 and 1981, the Jacobses paid their payroll taxes faithfully, they say, never suspecting a problem. Meanwhile, their tax money went into the other employer's account.

The first hint of a problem surfaced unexpectedly in the mail in 1981, when the IRS notified the Jacobses of failure to pay payroll taxes. They met with a local IRS official, says Nancy Jacobs, and showed canceled checks to support their claim that they had paid the taxes. She says the IRS official insisted they still owed the money, contending that if the taxes had been paid, the funds would be in their account.

Moreover, she says, every time she tried

to talk with an IRS official, she felt the agency had no interest in investigating her assertions that the taxes had been paid—despite all the documentation she produced.

Meanwhile, the Jacobses kept making payroll-tax payments for which the other employer got credit.

To recoup what it claimed were delinquent payments, the IRS seized $27,000 in income-tax refunds owed to the couple from 1989 to 1993.

A tax attorney hired by the Jacobses in 1992 finally unraveled the mistake with the employer identification numbers. But Nancy Jacobs says it took four more years of dealing with uncooperative IRS officials before the agency confirmed that the couple was "in full compliance" and sent them the letter of apology.

Since then, the IRS has returned $12,000 of the $27,000 it seized. The Jacobses say the IRS hasn't given them a reason for its delay in returning the remaining $15,000. Citing privacy rules, the IRS refuses to comment on any specific taxpayer cases.

Management Overhaul

Under the pending IRS-reform legislation, a board of directors would have a mandate to fix problems that lead to horror stories like those related by the Jacobses.

The 11-member board, which would be appointed by the president and ratified by the Senate, would include eight private-sector individuals and three government officials. Candidates for the private-sector slots would be chosen for their expertise in information technology and management of large service organizations.

The board would have two major tasks: to make sure that the IRS overhauls its management and to ensure that the agency upgrades its computer systems.

Critics have long maintained that IRS management encourages and rewards overzealous pursuit of taxpayers. "The IRS has to change from an enforcement organization to a customer-service organization," says Jay Kubik, who was a member of the IRS restructuring commission. He is an accountant with Baird, Kurtz & Dobson in Wichita, Kan. The firm serves mainly small-business clients.

The proposed board's role in shaping a more customer-friendly IRS would have a big impact on the agency's employees, say business people familiar with the IRS's operating methods. "The rank and file will realize there's going to be a board now that's going to oversee what they do," and the board will not want to see overzealous tax enforcement, says David Jordan, director of IRS-dispute-resolution services for the Ernst & Young accounting firm in Dallas.

Critics of the IRS argue, however, that the proposed legislation would not give the board enough authority to be effective. It could advise on administrative matters such as management changes and performance standards, but the panel would have no say in how the IRS interprets laws or handles enforcement matters such as audits.

Board members also would not have access to taxpayers' records when determining if the IRS is mistreating taxpayers.

PHOTO: GREG SORBER—BLACK STAR

IRS agents *displayed "bad-cop syndrome" in dealings with her children's clothing stores, says Carol Ward.*

Updating The Technology

If, as the Jacobses maintain, their tax problem was made worse by uncooperative IRS employees, the original problem apparently lay with the agency's computers, which allowed the couple to receive an employer identification number already assigned to someone else. Apparently the computer system also failed to detect that the Jacobses had two identification numbers.

The mix-up with the Jacobses' identification numbers "really gets to the heart of the fact that the IRS has such antiquated systems that do not talk to each other," says former IRS historian Shelley Davis. "There are many, many computer systems, but they are not interlinked." Davis, the agency's historian from 1988 to 1995, is the author of *Unbridled Power: Inside the Secret Culture of the IRS* (HarperBusiness, $25).

Under the IRS-reform bill, the board of directors would be responsible for making sure that the agency modernizes its computer systems, which the IRS has tried but failed to do for years. The bill also would require that the modernization process include incentives for taxpayers to file returns electronically. The goal is to have 80 percent of returns filed by computer by 2007.

Protecting The Taxpayer

The board's role would extend beyond management and computers. The proposed reform legislation includes 28 taxpayer-protection provisions designed to help individuals and small-business owners have their disputes resolved quickly and fairly. The board would monitor the IRS to make sure those provisions work as intended.

One provision would strengthen the IRS's Problem Resolution Program and the agency's Office of the Taxpayer Advocate, a position created by Congress in 1995. The head of that office is to act as an ombudsman representing the taxpayer's point of view within the agency.

When the Jacobses were trying to find someone to help them, they turned to the Problem Resolution Program. In every state there are IRS district offices that have an IRS official responsible for helping taxpayers cut through the bureaucracy and settle disputes fast. But Nancy Jacobs says the officers she consulted never followed through on their promises to help.

The proposed legislation aims to ensure that the advocate would remain independent of the IRS and have greater authority over the IRS officials who staff the Problem Resolution Program to make sure that they are providing needed assistance.

Other taxpayer protections in the bill address situations in which small-business owners and individuals end up fighting the IRS in court.

Under the legislation, the burden of proof in noncriminal court cases would shift from the taxpayer to the IRS. (The current burden-of-proof standard, contained in the

Internal Revenue Code, is considered a basic tenet of the tax system and an important aid to tax enforcement.) The change would apply only to individuals and businesses with net worth no greater than $7 million. All taxpayers would still shoulder the burden of proof at the administrative level in direct dealings with the IRS.

For administrative cases handled by the IRS, the bill would expand attorney-client privilege to cover accountants and other tax professionals authorized to practice before the agency. The expanded-privilege provision is designed to keep overzealous auditors from forcing tax advisers to divulge details of their conversations with—or opinions given to—their taxpayer clients.

Other provisions of the bill would:

■ Allow more taxpayers who take disputes to the U.S. Tax Court to use expedited procedures, increasing the ceiling for use of such procedures to disputes involving up to $25,000 from the current $10,000.

■ Expand the authority of the courts to require the IRS to pay attorneys' fees and costs in cases where the taxpayer prevails and to increase the statutory limit on fee awards.

■ Make it easier for taxpayers to show that an IRS employee acted improperly. Currently, the taxpayer has to prove the employee acted with "reckless or intentional disregard" of the law; the revised standard would require the taxpayer to prove "negligent disregard."

The IRS-reform legislation "attempts to level the playing field" so that "small businesses are going to pay their fair share of taxes and no more."

—Gerry Harkins, Southern Pan Services Co.

A Victory In Court

The taxpayer protections included in the reform legislation might have prevented some problems for clothing retailer Carol Ward, who sued the IRS and won, though not without a lot of trouble.

Ward says her problems began in 1993 after she insulted an IRS agent during an audit. The IRS subsequently sent her a bill for $324,889 in back taxes—an amount far larger than what she had expected. Shortly thereafter, according to Ward, IRS agents moved in without warning and shut down three children's clothing stores she owned in Denver and Colorado Springs, then seized the stores' assets. "From the behavior I saw, we had the worst of bad-cop syndrome there," Ward says.

She says she complained to her local IRS office about the assessment. In response, she says, the agency a few weeks later sent her a detailed computer printout. It stated—without explanation or apology—that her tax bill actually was $3,485. The IRS returned the seized assets, she says. But IRS officials raised her ire by discussing her case on a local radio show—a violation of the agency's taxpayer-privacy rules.

Ward sued the IRS in 1995 over the disclosures, and on June 2, 1997, she was awarded $325,000 in damages plus about $225,000 in attorneys' fees by the U.S. District Court in Denver. Court records show that the IRS filed motions on June 17 to block the award. The agency is expected to appeal the decision if those motions fail. Ward has since moved to New Mexico and opened two children's stores called Para Niños in Santa Fe and Albuquerque.

Ward says that what she calls the IRS's intransigence in her case and other disputes could discourage small-business owners from using the court system to fight back when they believe they have been mistreated.

Ward, whose court battle continues, could be helped by the proposal to allow courts to be more generous when requiring the IRS to pay the fees of plaintiffs' attorneys. She says the $225,000 award for attorneys' fees doesn't cover the full cost of her representation.

Proponents of the IRS-reform bill say it would not fix the agency overnight but would be an important step in the right direction. "Small businesses feel they have no recourse if the IRS decides to impose its will on them," says Gerry Harkins, a member of the IRS restructuring commission and the owner of Southern Pan Services Co., a commercial-construction firm in Conley, Ga. The IRS-reform legislation "attempts to level the playing field" so that "small businesses are going to pay their fair share of taxes and no more," says Harkins.

If the reform legislation is enacted, says fellow commission member Kubik, "I think you'll see a much better organization and one that's much more responsive to small-business owners." NB

How To Solve An IRS Problem

The Internal Revenue Service's Problem Resolution Program is designed to help taxpayers resolve disputes that have not been settled through normal channels.

A tax dispute is eligible for the program if the agency fails to respond to a taxpayer request by a date promised; if a taxpayer has made repeated unsuccessful attempts to contact IRS officials to try to get a problem solved; if the system has failed the taxpayer; or if using the Problem Resolution Program would be in the best interest of the taxpayer or the IRS.

In every state there are IRS offices that have agency officials dedicated to the Problem Resolution Program. Those officials used to be called "problem resolution officers." They are now "local taxpayer advocates."

To find the Problem Resolution Program office nearest you, call the IRS's toll-free number, 1-800-829-1040. Don't use the touch-tone menu. Instead, wait for an operator, and ask for Problem Resolution Program assistance. You will be connected with someone in the Procedures Division who will give you a number to call for the closest IRS office with a taxpayer advocate.

When you contact a local taxpayer advocate, be prepared to provide:

■ Your Social Security number or employer identification number.

■ A detailed description of your tax dispute, including the tax years and type of return involved.

■ The attempts you have already made to resolve the dispute.

The IRS says that taxpayers can expect the following from local taxpayer advocates: courteous treatment; follow-up within seven days of the initial contact; an estimate of how long it will take to settle the case; and speedy resolution.

The IRS has more information about the Problem Resolution Program at the following address on the World Wide Web: *www.irs.ustreas.gov/prod/tax_edu/teletax/tc104.html*. Or call 1-800-829-3676 and request a free copy of Publication No. 1546, *How to Use the Problem Resolution Program of the IRS.* Select No. 1 from the options menu and you will be transferred to a customer-service representative who will take your name and address so the publication can be sent to you.

MANAGING

A Course Change At The NLRB

Restored to full strength, the five-member National Labor Relations Board is expected to issue rulings that could help unions.

By James Worsham

WILLIAM B. GOULD IV
Term expires Aug. 27, 1998

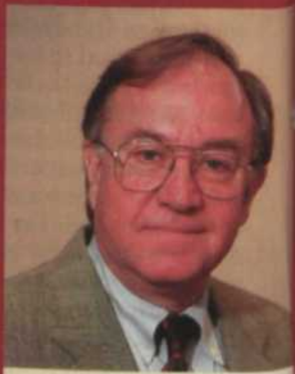
Chairman. Plans to return to Stanford University in the fall to teach labor law. Author of several law books. Former baseball arbitrator. Has led the board away from pro-management stances it took during the Reagan and Bush administrations. Cornell Law School. Democrat.

SARAH M. FOX
Term expires Dec. 16, 1999

Has served in a recess appointment since January 1996. Onetime newspaper reporter and former attorney for the Bricklayers union. Was chief labor counsel to the Democrats—led by Sen. Edward M. Kennedy—on the Senate Labor and Human Resources Committee. Harvard Law School. Democrat.

J. ROBERT BRAME III
Term expires Aug. 27, 2000

Labor lawyer and partner in the Richmond, Va., law firm McGuire, Woods, Battle & Boothe. Was counsel to the Virginia Republican Party, 1993-96. Headed a special gubernatorial panel on states' rights. Yale Law School. Republican.



PETER J. HURTGEN
Term expires Aug. 27, 2001

Labor lawyer and partner in the Miami office of Morgan, Lewis & Bockius. Represented business clients in manufacturing, media, education, transportation, and government. Georgetown University Law Center. Republican.

PHOTOS: T. MICHAEL KEZA

The National Labor Relations Board, long a battleground for unions and management, is poised to make several decisions this year that could be crucial to organized labor's planned resurgence.

The board, with all five of its seats filled for the first time in more than two years, could make it easier for AFL-CIO member unions to carry out their massive organizing drives as they seek to boost their ranks and their political clout.

"If there is one overriding theme in [many of] the ... cases that are going to be coming before us, it is 'Who's an employee?' and 'What's the employment relationship?'" NLRB Chairman William B. Gould IV told *Nation's Business* in an interview.

Foremost among those cases are two that seek a board decision on whether independent contractors, used instead of full-time workers by many small businesses, are to be considered employees of a company for union organizing purposes. Several other cases seek to determine whether temporary workers may be represented by a union at the firms where they are placed for temporary work.

"The Clinton NLRB has put a heavy emphasis on union rights and organizing," says Marshall Babson, a former NLRB board member and an attorney in the Washington, D.C., law firm of Ogletree, Deakins, Nash, Smoak, and Stewart. Babson, a Democrat, was appointed to the NLRB by President Reagan and served from 1985 to 1988.

One of the NLRB's harshest critics, Daniel Yager, general counsel of the Labor Policy Association, a business-supported group, says that the NLRB problem for business goes deeper than any particular decision. "There's an institutional bias in favor of unions," he says. "No matter who the board members are, [union bias] is going to assert itself."

The unions may be counting on the help. Only 10 percent of workers at private companies are unionized today, compared with nearly 36 percent during organized labor's heyday in the mid-1950s. With the election in late 1995 of John J. Sweeney as president of the AFL-CIO, organized labor has sharply stepped up its organizing drives and has adopted a tougher stance with reluctant employers.

Small companies in particular are affected by the NLRB's actions—from its rulings on allegations of unfair labor practices to its actions that open new opportunities for unions to organize. The board's impact falls mainly on small firms, says Gould, because large companies typically are unionized or, if they maintain a long-standing nonunion tradition, are well aware of the complexities of labor laws.

"Most union organizing and most employer activity which comes to our attention is in smaller enterprises," he says, since small firms generally are the least familiar with labor laws.

Major Rulings Ahead

Important decisions are likely to be made by the board this year now that it is at full strength for the first time since August 1995. The Senate confirmed the nominations of three new members and one reappointed member in the final days of the 1997 congressional session.

The reappointed member and one of the new members are Democrats, and two new members are Republicans. Including Gould, the Democrats have a 3-2 edge on the panel. Gould's term ends in August.

The other Democrats are Sarah M. Fox, who, since January 1996, had held a temporary appointment that did not require Senate confirmation, and Wilma B. Liebman, most recently deputy director of the Federal Mediation and Conciliation Service.

The two new Republican members are lawyers who have represented management in labor matters. They are J. Robert Brame III, with the Richmond, Va., law firm McGuire, Woods, Battle & Boothe, and Peter J. Hurtgen, with the Miami office of Morgan, Lewis & Bockius, a Philadelphia-based firm.

"Intellectually, it will be as bright and able a group as the agency has had at any one time," says former member Babson.

Since 1993, under Clinton appointees, the board has been charting a new course, following a number of years when Republicans appointed by Presidents Reagan and Bush were in the majority.

"The board is moving in a direction that would clearly expand the rights of unions and overturn long-standing precedents, encroaching on the few rights management has," says Jerry Hunter, NLRB general counsel during the Bush administration and now with the St. Louis law firm Bryan Cave LLP.

Gould disagrees with that assessment, saying that the NLRB under Reagan and Bush appointees was pro-business and that he has "moved our board back toward the center as an impartial arbiter. The source of a lot of criticism of me lies in the fact that some people had been used to having it all their own way."

Nonetheless, under Gould, the board has made it easier for unions to organize workers. It has broadened the circumstances in which employees can use mail ballots rather than secret-ballot elections for determining if they want a union. It also has made it easier for unions to obtain employee names and addresses during organizing campaigns. The board has even held that employees' electronic mail criticizing an employer's policies is a protected union activity under the National Labor Relations Act.

The board has sought to expand the kinds of financial information that companies are required to supply to unions during contract negotiations, but it has been blocked by federal courts.

Among the key issues expected to emerge this year:

Independent Contractors: In two cases that already have been argued before the board, the NLRB is being asked to broaden the definition of employee. Such a move could hurt companies by requiring that more individuals be classified as employees, thus making them eligible for union membership. It would also make them eligible for company benefits, such as insurance and pensions, and would require firms to pay half of their Social Security and Medicare taxes.

Currently, the board determines whether individuals are independent contractors or employees by using a "right-of-control" test that seeks to determine how much authority the company has over an individual; the more control, the less likely it is that the individual can be classified as independent.

At a time when businesses increasingly are using independent contractors, the AFL-CIO is seeking to broaden the test for employee status by treating individuals who are "economically dependent" on and under the control of an employer as employees for union organizing purposes.

Opponents, including the U.S. Chamber of Commerce, have urged the NLRB not to broaden the test beyond its current factors. At the Internal Revenue Service, however, the Chamber is still seeking clarification of the IRS rules governing the classification of people as independent contractors or employees for tax purposes.

Temporary Employees: In cases pending before the board, the NLRB is being asked to broaden the definition of "joint employer" so that employees of temporary-employment agencies could be considered on the same basis as the full-time employees of the client company and thus be eligible for union representation and the same pay and benefits as regular employees.

Decisions expected on independent contractors and temporary workers could have a "dramatic impact" on small businesses, says Peter Eide, manager of labor-law policy for the U.S. Chamber. "The market de-

WILMA B. LIEBMAN
Term expires Dec. 16, 2002

Most recently was deputy director of the Federal Mediation and Conciliation Service. Served as a lawyer for the Bricklayers and the Teamsters unions. Onetime attorney for the NLRB, George Washington University Law School. Democrat.

"If there is one overriding theme in [many of] the cases that are going to be coming before us, it is 'Who's an employee?' "

—NLRB Chairman William B. Gould IV

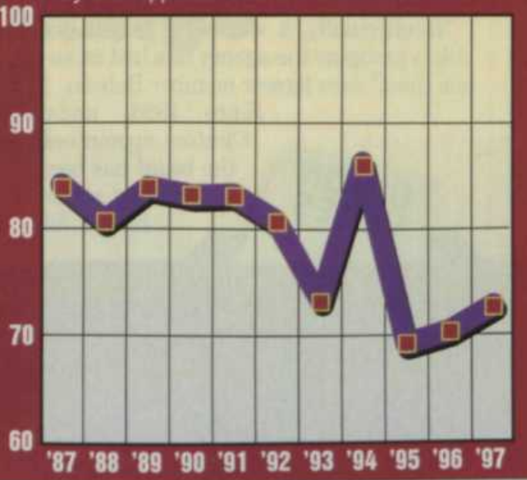
mands that small businesses be flexible, such as at holiday time, and flexibility demands the ability to use contingent workers."

Mail Ballots: Gould said it was "inevitable there would be more refinement of mail balloting," which the board has promoted in recent years through decisions and guidance to regional directors. Under this system, employees can vote in union-representation elections by mail rather than through NLRB-sponsored ballot-box voting.

"Clarification of the increased use of mail ballots is an important area for this board to determine," says Charles I. Cohen, a senior partner in the Washington office of Morgan, Lewis who served on the NLRB from 1994 to 1996. He says the issue is especially important because with mail ballots, unlike secret-ballot elections, "the integrity of the process is very easily compromised."

The NLRB In Court

Percentage Of Board Orders Upheld By U.S. Appellate Courts In Each Fiscal Year



SOURCES: NATIONAL LABOR RELATIONS BOARD; EMPLOYMENT POLICY ASSOCIATION

Dues Money Used For Politics: Gould forecasts "another round" on the issue of whether a portion of a union member's dues can be used for political purposes even if the member objects. The 1988 decision by the U.S. Supreme Court in *Beck vs. Communications Workers of America* upheld an employee's right to request a refund of any portion of his or her dues that goes for political purposes, but business groups fault the NLRB for not enforcing it.

The issue has gone beyond the board, however. Supporters of Beck-like rules are pushing a referendum in California for the June 1998 ballot that would limit the use of union dues for political purposes. (See "Declaring War On Union Political Dues," January.) The matter is expected to be on the ballot soon in a number of other states as well.

The NLRB, established in 1935, has two major functions. One is to hold secret-ballot elections to determine if employees want a union to represent them with their employer. The other is to act on allegations of unfair labor practices by either unions or employers.

In 1996, the board conducted 3,327 secret-ballot elections on union representation. That year, about 33,000 complaints of unfair labor practices were made to the agency; about one-third were found to be meritorious, and 90 percent of those were settled before they reached the board itself. If necessary, the board can go to federal court to stop a labor practice it has determined to be unfair.

Gould's moves away from what some call a pro-business stance haven't endeared him to Republicans in Congress. Through legislation over the past three years, Congress has prohibited the agency from issuing any rules to facilitate union organizing drives at

Preventive Measures

What are the chances that your employees might vote to form a union to represent them in negotiations with your company? If your firm is already unionized, is the union likely to become more active?

Unions are not inevitable for businesses, say the experts. In fact, only 10 percent of all private-sector workers are in unions, down from a high of almost 36 percent in the mid-1950s.

But the organized-labor movement in the United States has been re-energized in recent years, and the AFL-CIO and its member unions are pumping millions of dollars into forming unions—mainly in small and medium-sized companies.

Robert Lewis, a founding partner at Jackson, Lewis, Schnitzler & Krupman, an employment-law firm in New York City, says union activity has been increasing. "We see a great deal of union organizing, considerably more than a few years ago," he says. Nonetheless, he says, there are key actions that managers can take to help avoid a unionizing effort and to win an election if one is ordered by the National Labor Relations Board.

Drawing on his law firm's book, *Winning NLRB Elections: Avoiding Unionization Through Preventive Employee Relations Programs,* Lewis offers these suggestions:

Create a good workplace climate for your employees.

Provide interesting work, have an effective way to resolve problems and disputes, recognize outstanding performance, make sure the workplace is free of safety and health hazards, and offer wages and benefits comparable with those at other firms in your industry and community. And make sure you communicate with your workers.

"People should feel they can talk to their boss and can discuss and resolve problems," Lewis says. "And employers should talk to their employees."

Offer ways to resolve disputes besides going to the NLRB or court.

This usually involves the use of an outside arbitrator or mediator who hears both sides of the dispute and makes a ruling that both parties have agreed to accept. Courts usually look favorably on such attempts to resolve problems.

The American Arbitration Association is the biggest provider of services in this field, but other providers can be found in the *Martindale-Hubbell Dispute Resolution Directory,* available in many libraries and law offices.

"Employees should have the opportunity internally or externally to get problems resolved before they lead to litigation," says Lewis.

If there is an NLRB-supervised election, be aggressive in stating the company's views.

In trying to make your case against having a union in your workplace, be sure to distinguish between the interests of the employees and the interests of the union. "Point out the deficiencies and disadvantages of unionization," says Lewis.

Make sure employees understand that a vote against a union is not necessarily a vote for the employer. In your writings to employees, Lewis advises, say to your employees: "These are things you should think about."

More-detailed suggestions are offered in *Winning NLRB Elections,* first published in 1972 and now in a fourth, updated edition published by CCH Inc. It is available for $75. To order a copy, call 1-800-248-3248.

single units of multiple-location employers; the NLRB still can rule on cases involving single-site organizing.

Also, Congress has cut the NLRB's budget, which has reduced its effectiveness, according to congressional testimony last year by Jonathan Hiatt, general counsel of the AFL-CIO. For fiscal 1998, which began Oct. 1, Congress froze the agency's funding at the previous year's level of $175 million. Since 1980, the agency's budget has been reduced, in inflation-adjusted dollars, by 20 percent, and the staff has been reduced by about one-third.

"The systematic defunding of the NLRB is undermining the capacity of the agency to enforce the [National Labor Relations] Act on behalf of America's workers," Hiatt told the lawmakers.

With new appointees, however, there may be some shift in the board's decisions. "I believe the newer members will pull back from some of the extremes of the Gould board in recent years, and maybe it will return to the center," says Robert Lewis, a founding partner in the labor-law firm Jackson, Lewis, Schnitzler & Krupman in New York City.

NLRB Scorecard

Action On Contested NLRB Rulings In Each Fiscal Year

	Decisions Issued	Cases Pending
1987	1,018	692
1988	995	593
1989	1,038	437
1990	859	459
1991	1,056	348
1992	982	363
1993	898	375
1994	717	461
1995	935	366
1996	709	397
1997	673	567

SOURCE: NATIONAL LABOR RELATIONS BOARD

Yager of the Labor Policy Association says the appointment of veteran labor-law attorneys Brame and Hurtgen will help put the brakes on what he views as NLRB excesses. "What will change," he says, "is that there will be some very strong individuals voicing dissents, pointing out departures from long-standing precedents, and helping get [board decisions] reversed in federal appeals court." The views of those who dissent to the decisions by the Democratic majority, he explains, would also be good ammunition for employers in appealing the board's rulings.

If the NLRB, as forecast, issues a number of 3-2 decisions in favor of labor's positions, such rulings alone won't solve all the problems for organized labor as it seeks to increase its ranks and enlarge its political muscle.

Major anti-business decisions would probably be appealed in the federal courts by business groups. And strong dissents by pro-business members could help get board decisions reversed or modified.

Even one of labor's champions, Vic Kamber, president of the Kamber Group, a Washington public-relations firm that represents 24 unions, warns that labor shouldn't count on NLRB rulings against business as silver bullets in the unions' attempts to increase membership. To increase its ranks, labor must rely on old-fashioned organizing, media work, and changing public opinion, Kamber says. "If labor has to depend on judicial decisions, it's never going to grow." NB

BENEFITS

Company-Paid Costs Decline Slightly

The overall drop for all companies in 1996 masked an increase for small firms feeling the pinch of tight labor.

By Stephen Blakely

The average cost of employee benefits dipped slightly to 41.3 percent of payroll in 1996, a retreat from the record-high 42 percent of payroll a year earlier, according to a new benefits survey by the U.S. Chamber of Commerce.

The survey found that the average cost of all benefits for each full-time worker totaled $14,086 in 1996, compared with $14,659 in 1995.

However, the average for all companies masks the fact that small firms' costs increased. Benefits as a percentage of payroll for companies with fewer than 100 employees went up more than 3 percent in 1996, and there were moderate increases for firms in the categories of 100 to 499 and 1,000 to 2,499 employees.

Average benefit costs were unchanged for companies with 500 to 999 employees, and they dropped 1.4 percent for companies with more than 2,500 workers.

According to the Chamber survey, the overall decline in average benefit costs came about through a reduction in expenses for retired and former employees in medium-sized and large companies.

The survey attributes the differing trends in small- and big-business benefit costs to two major factors. One is a decline in restructuring and downsizing, which has reduced costs for big companies; the other is the growing competition for labor among small firms, which pushes up their costs.

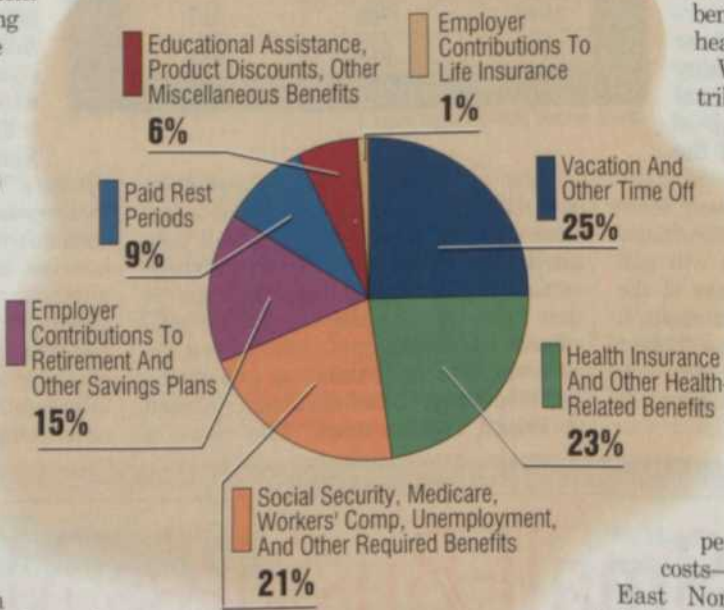
The fact that smaller firms increased their benefit expenditures in 1996 "may be an indication of a tighter labor market and smaller firms feeling they have to be more competitive in order to attract and keep employees," the report says.

The Chamber survey, *Employee Benefits 1997 Edition*, is based on the responses of 802 businesses from a cross section of industries, states, and company sizes. Collectively, the firms employed 2.3 million full-time-equivalent workers, making the survey the largest of its kind. This marks the 50th year that the U.S. Chamber has conducted its annual survey.

CHART: ALBERTO PACHECO

Employer-Paid Benefits

How All Benefit Dollars Were Spent In 1996



SOURCE: *EMPLOYEE BENEFITS 1997 EDITION*, U.S. CHAMBER OF COMMERCE

Shifting Some Costs

Until recently, the driving force behind changes in benefit costs, according to the survey, was the large amount of restructuring and downsizing taking place in American industry. Associated costs for retiree health insurance, payments to defined-benefit pension plans, and severance pay went up in 1995, but all went down in 1996. Costs shifted more toward providing benefits for active employees as expenses for former employees declined.

In 1996, employers' costs for health insurance declined for the third consecutive year, to just under 10 percent of payroll. The reason was not any reduction in overall health-care costs but rather the continuing shift to managed-care health plans and the transfer of medical costs to employees. Workers' health-insurance payments, on the rise since 1993, grew to 1.7 percent of payroll in 1996, up by 0.2 of a percentage point from 1995.

Although small companies appear to be offering more benefits than before, the Chamber report adds, the smallest firms still "are less likely to offer medical benefits than larger firms are."

Vacation and paid time off became the largest slice—one-fourth—of the benefits pie in 1996, edging out health-insurance costs.

While more companies are contributing to employee retirement plans, the survey found, companies appear to be contributing less. About 87 percent of the firms in the survey said they contributed to a savings plan, pension fund, profit-sharing plan, or similar retirement program, but the amount paid into those plans decreased to 6.3 percent of payroll in 1996 from 7.5 percent in 1995.

Employers in the Northeast continued to pay the highest percentage of payroll for benefit costs—44.8 percent. Employers in the East North Central region (Illinois, Indiana, Michigan, Ohio, and Wisconsin) and the West paid 40 to 41 percent of payroll for benefits, while companies in the Southeast paid the least, 39.9 percent.

The report points out that employee-benefit issues "are the focal point of social legislation of the 1990s" as Congress acts to place additional mandates on employers.

To Obtain The Survey

Employee Benefits 1997 Edition is available for $35 in printed form. Employee Benefits Analyzer, a $95 computer program, enables companies to compare their benefits with those of other firms by industry, region, and size category. Another program, BeneTrax, lets employers generate statements that show employees the value of their company-paid benefits. It is $95 for firms with 25 or fewer employees, higher for larger firms.

The printed survey and Employee Benefits Analyzer can be purchased together for $115. All three products (the survey and both software programs) cost $179 for firms with 25 or fewer employees; the cost is higher for larger companies.

To order or for more information, call 1-800-638-6582 between 8:30 a.m. and 6 p.m. Eastern time. In Maryland, call 1-800-352-1450.

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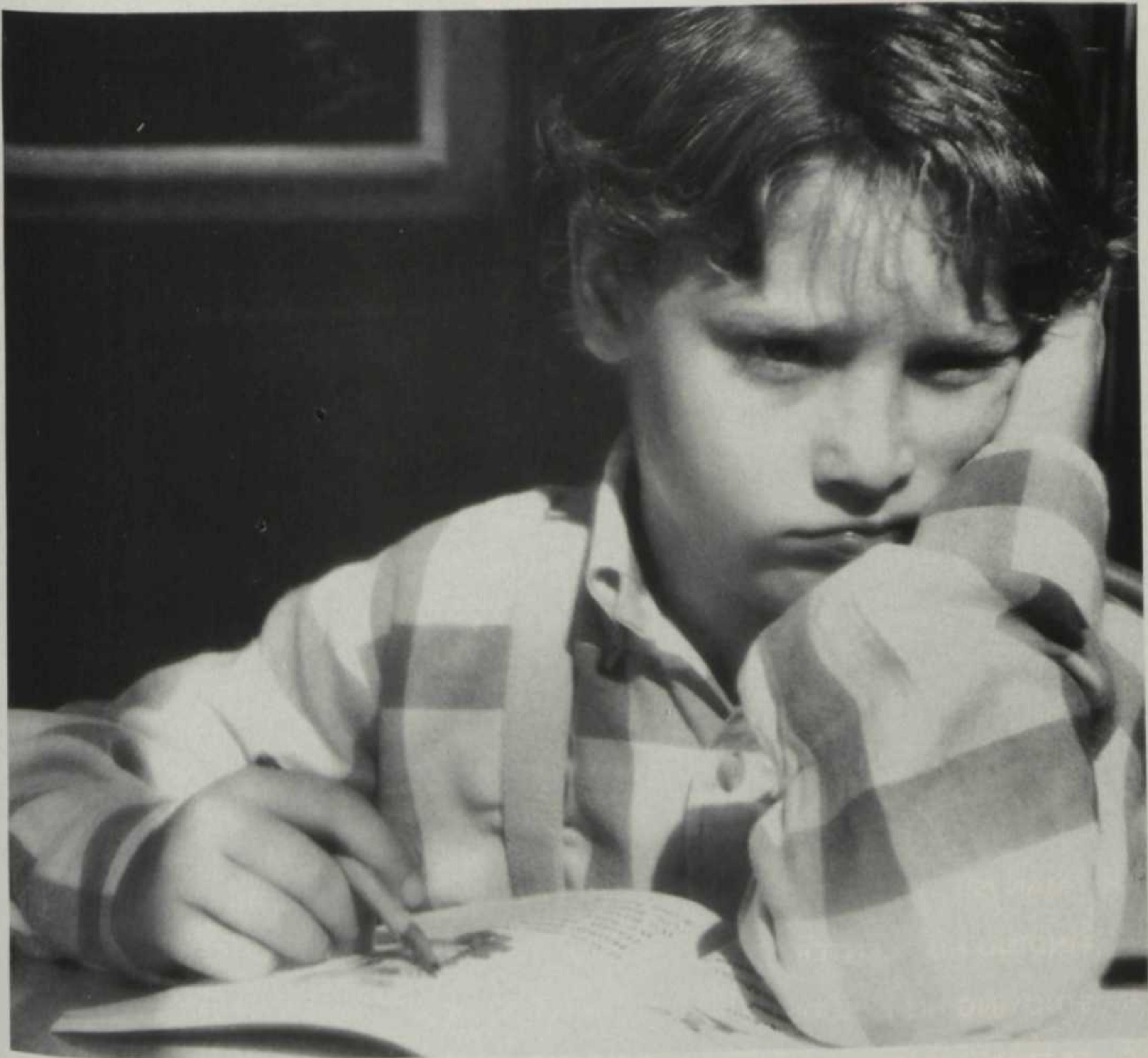
- Fly the Scandinavian Way to Europe

He may be a good kid with a bad case of Tourette Syndrome.



Strange behavior may be a signal. Not of a difficult child, but a difficult-to-diagnose disorder called Tourette Syndrome. Symptoms may include sudden body movements, tics, uncontrollable and repeated twitches and jerks, or shrill yelping noises.

Parents will share your concern and confusion.

We can help. For more information, contact the Tourette Syndrome Association. 42-40 A Bell Boulevard, Bayside, NY 11361. (718) 224-2999.

Tourette Syndrome Association

Knowing what you have–is knowing what to do.

NY/E9

NY/E11

LEGISLATION

State Lawmakers' Business Focus

Members of state legislatures are taking the lead over their counterparts in Congress on a host of issues important to business.

By David Warner

States are expected to consider numerous bills this year that would affect business, including legislation dealing with electric-utility deregulation, tax cuts, health-care reform, and privatization of government services.

About 210,000 bills—many related to business—are introduced in state legislatures in a typical two-year cycle, according to Stateside Associates, a company in Arlington, Va., that tracks state legislation. Increasingly, state lawmakers are taking the lead over their counterparts in Congress on a host of issues.

PHOTO: T. MICHAEL KEZA

Republican governors *have come to the fore on many issues, says Constance Campanella of Stateside Associates, which tracks state legislation.*

One of the areas where the states have been out front is product-liability reform. Starting in the mid-1980s, several states reformed their product-liability laws, placing caps on awards for damages and limiting liability. States took action, say professionals who monitor state legislation, when state officials grew tired of waiting for Congress to approve a uniform, federal liability statute. (Although Congress has made progress toward passing a product-liability law, lawmakers are still debating the merits of doing so.)

On welfare reform, too, the states took the legislative lead. For example, in the 1980s—years before Congress passed the landmark welfare-reform legislation of 1996—Wisconsin, under Republican Gov. Tommy G. Thompson, began making changes in its welfare system.

"The trend is still toward the states wanting to grab things, wanting to do more things, not being willing to wait for the feds," says Paul Hallman, president of MultiState Associates, an Alexandria, Va., firm that tracks state legislation.

States have been seizing the initiative on issues particularly since 1995, when Republicans took control of Congress and 32 GOP governors took office—up from 18 in 1994—says Constance Campanella, president of Stateside Associates. Republican congressional leaders pledged to give the states more power over various policies, she says, and for the most part they have followed through.

"The Republican governors, working together with the Republican-led Congress, have been extraordinary," says Campanella. "They've had the willingness to get out there and take more responsibility on a whole array of areas, and Congress has let them."

Electricity And Health

One of several issues important to business and likely to come up for consideration in many state legislatures this year is deregulation of the electric-power industry. Congress began debating the matter in 1997 and is expected to continue doing so this year, but a federal deregulation bill is not likely to pass in 1998.

In contrast, more than a dozen states have passed legislation to encourage competition among power companies to reduce consumer costs by allowing any electricity generator to sell in their states. The legislatures in more than a dozen other states are expected to consider deregulation measures.

Health-care legislation also is expected to be considered in several states this year. Among the most prominent proposals are measures to regulate health-maintenance organizations. A number of proposals would mandate that HMOs provide certain minimum levels of care for patients.

California, frequently a legislative trendsetter for the states, might consider several proposals to rein in managed-care groups. Among bills expected to be considered are requirements that HMOs pay for emergency-room services deemed necessary by any "reasonable person." Since 1996, 110 bills concerning managed care have been introduced in the California Legislature, though none has been enacted.

California lawmakers might take up legislation to require that employers cover certain illnesses and to expand medical-malpractice liability to health-insurance providers, says Alan Zaremberg, president of the California Chamber of Commerce in Sacramento. "There will be a lot of activity" in the health-care area, he says.

Also, states that want to gain federal funding for expanding health care for children will have to develop specific plans for spending that money before the U.S. Department of Health and Human Services will consider their requests. The plans must be submitted to the department's Health Care Financing Administration by June 30.

Tax Modifications

Tax changes are almost always on state legislatures' agendas. In the past few years, a number of states have cut taxes. Arizona, Iowa, Michigan, Nebraska, New

LEGISLATION

Jersey, and New York have reduced income-tax rates, for example.

Property taxes, whether on real estate or on personal possessions such as cars and boats, have been limited by a number of state legislatures recently even though such taxes generally have been the province of local governments. In 1997, more than a dozen states—including Indiana, New York, and Texas among the most populous—enacted some type of property-tax relief.

PHOTO: T. MICHAEL KEZA

Many states are considering *privatization of government functions, says Paul Hallman of MultiState Associates.*

Michael Flynn, director of tax and fiscal policy at the American Legislative Exchange Council, an organization that represents fiscally conservative state lawmakers, says the tax-cut trend likely will continue in 1998.

One development that could temper the states' tax-cutting plans, however, is their recent penchant for increases in spending. "Even in a time when you're seeing a lot of tax cuts, you're also seeing fairly large increases in state budgets," observes Stephen Moore, director of fiscal-policy studies for the Cato Institute, a public-policy research organization in Washington, D.C. "The cuts aren't coming at the expense of government programs; states are spending and cutting taxes."

That's a potentially dangerous mix, Moore says. If the U.S. economy or those states' economies should falter, the states could be in trouble, he says. States get a majority of their revenues from taxes on consumption, which usually increases in good economic times and declines during slack periods.

Contracting And Labor

In seeking to shrink government spending, many states are considering turning traditional government functions and services—such as constructing prisons and operating liquor stores—over to private companies. "Privatization is clearly a trend," says MultiState's Hallman.

Most moves to privatize, however, draw heated opposition from public-sector unions whose rank-and-file members are employed—often at above-market wages—in state government jobs.

Unions also can be expected to weigh in on the top labor issue likely to be considered in several states—the so-called living wage.

According to Stateside's Campanella, unions have already succeeded in encouraging some local governments to adopt living-wage provisions, which require government vendors to give their employees at least a specified minimum package of wages and benefits.

Regulation

Citing another trend, Campanella notes that states are implementing regulations, primarily environmental rules, that are flexible and voluntary and that contain incentives rather than mandates. "On issues like environmental remediation, where the old command-and-control, stick-without-the-carrot characterized past approaches, the states have led the effort to create new systems using incentives to encourage companies to clean up abandoned sites," she says.

Thirty-five states, for example, have adopted programs that provide liability protection to firms that clean contaminated sites voluntarily. Twenty-three other states recently passed laws that encourage companies to conduct environmental self-audits.

Other matters expected to top the legislative agendas of many states are education, including funding and reform issues; telecommunications deregulation; and issues related to the Internet, such as taxation of online sales.

Politics, however, may cloud the legislative picture in many states in 1998. Thirty-six governorships and the seats of hundreds of state lawmakers will be contested this year. This is likely to make it harder to get cooperation between the parties in the statehouses and between legislatures and governors to enact legislation.

"If I were to make predictions," says David Nice, a professor of political science at Washington State University in Pullman, "I'd say we're going to have this acrimonious climate ... in quite a few state legislatures. I'm not hopeful as far as a real productive [legislative] environment."

Nevertheless, says Stateside's Campanella, it's in business's best interest to keep a watchful eye on the statehouses this year. NB

Small Business Technology

Today's point-of-sale systems supply information management and convenience that give small firms new service capabilities.

By Tim McCollum

A Cutting Edge For Small Stores

Booming sales of skates and snowboards propelled a rapid expansion for New York City-based Blades Board & Skate, but the growth also forced the company to put on the brakes and evaluate how it was managing its retail operations.

From 1990 to 1996, the retailer grew from a single Manhattan location to eight stores in New York City and New Jersey. Last year, when the company planned to nearly double its number of stores to 15 and expand to Boston and Chicago, executives determined that the business needed a computer system that could instantly track sales and inventory at all of its stores.

So Blades modernized its retail point-of-sale (POS) system so that executives at headquarters could keep up with sales and inventory at all locations while each store could track its own such data. The new POS system also enabled managers to make better use of information gathered from customers.

To achieve the modernization, the company upgraded its POS software to the latest version of CounterPoint, from Synchronics Inc. of Memphis, Tenn. Blades had previously used an older, less sophisticated version of the Synchronics program.

"I was looking for better information management and greater ease of use" in a new system, says Joel Silverman, chief operating officer of Blades.

Information After The Sale

Improving information management has become the critical issue for most small retailers, says Judy Newdom, a principal of Computer Sciences Corp.'s national retail practice, based in Cleveland. As a result, cash registers at many small businesses have been transformed into computerized POS systems.

Newdom says POS systems help small retailers cut costs, increase profits, and serve customers better by making the most of sales information.

"Point-of-sale registers are no longer just machines for taking in money," she says. "They are hooked up to very sophisticated information about what is in the store and also to the inventory of a retailer's other stores. So if an item is not in the store, they can find another one that has it."

Silverman says he selected the upgraded CounterPoint software after evaluating other packages because it would run on the assortment of POS hardware his firm already had. Switching to competing POS software would have required Blades to purchase new hardware, he says.

The new version of CounterPoint gives the company a quicker, more accurate, and more detailed picture of its sales and inventory than the previous version. Moreover, the program can be tied into the firm's accounting software, Dynamics, from Great Plains Software Inc. of Fargo, N.D. This enables each sale to be entered instantly into the accounting ledger.

Silverman says the revamped CounterPoint system has met the goal of providing Blades better control of its process of ordering and distributing products even as the company grows. "Inventory control is a key feature for an expanding business," he says. "There's no way that we would have been able to achieve the growth that we have had in the last year without our new POS software package."

According to Silverman, the updated CounterPoint system gives store managers tools that help them better control their operations. Employees can use the system to see what is in stock at their location and in the warehouse.

Blades stores are linked to one another and to the warehouse and headquarters by electronic mail, which has resulted in more-

PHOTO: ©TOM SOBOLIK—BLACK STAR

A modernized *point-of-sale computer system improved information management at Blades Board & Skate, says Joel Silverman, chief operating officer.*

efficient and less-expensive communications among stores, Silverman says. And the software also allows the company to order products from vendors only when needed, decreasing the amount of warehouse space required to store inventory and thereby improving cash flow.

Instant Tracking Of Trends

When used in sales transactions, POS systems record information that is then fed into the company's accounting and inventory systems to provide constant analysis of sales trends and customers' buying preferences. Combined with the widespread use of technologies such as bar-coding, POS systems can allow retailers to track each item.

In addition, says Computer Sciences' Newdom, the systems make it easier for firms to balance their books and make tax payments and electronic transactions with banks.

Simonson Station Stores Inc. in Grand Forks, N.D., is using POS technology to gain greater control over the merchandise and transactions in its nine convenience stores.

Each store is linked to the home office through CompuTouch, a POS system from Radiant Systems Inc. of Alpharetta, Ga. The link allows executives to maintain a constant audit of sales and supplies.

"There's nothing in our operation that we don't know about" through the POS system, says Arch Simonson, the firm's vice president. "We can actually audit our stores while sales are happening. It gives us deadly-accurate information, which helps us manage our stores."

Like the CounterPoint system, CompuTouch is easy for employees to use. They ring up sales using a touch-screen terminal and a bar-code scanner. POS functions are accessed by touching icons on the screen.

Small retailers can use POS technology to compete with larger stores by providing better service. For example, gift-shop owner Lisa Tee says SureOne POS terminals, from IBM Corp. in Somers, N.Y., helped her establish a positive reputation when she opened a store last year amid national retailers in a mall in Marlborough, Mass. Tee's two stores, called A Basket Case, sell specialty items such as custom-made gift baskets, gourmet foods, greeting cards, and crystal glassware.

"Being one of the few independent stores in the mall, we needed to establish the same kind of credibility as the other stores," Tee says. "The SureOne systems make us seem like we belong" in the big leagues.

The SureOne system consists of a Pentium-class personal computer with a built-in cash drawer, a terminal screen, a printer, a check reader, and a credit-card reader. Tee says the all-in-one design makes the system more compact and easier to set up and maintain than her previous system, which required five separate components for each terminal.

PHOTO: ©RICHARD HOWARD

Point-of-sale technology *is helping gift-shop owner Lisa Tee compete with larger stores by providing excellent service.*

The SureOne terminals at the mall store are tied into A Basket Case's inventory database at its main store a few miles away in West Boylston, where items are warehoused. The link is accomplished using Retail Pro retail-management software, from Retail Technologies International of Carmichael, Calif. Through the link, employees can check the database to see if an item that's unavailable at one store is in stock at another.

This ability to use POS technology to provide more-personal service may give small retailers an edge over larger companies, says James E. Dion, senior partner with J.C. Williams Group, a retail consulting firm in Chicago. Dion says companies can use POS software to profile their customers' spending habits to anticipate an individual customer's preferences and alert the customer to special sales. He likens this capability to the way business was conducted in the early 1900s, when small merchants knew their customers by name.

"Customer profiling is one of the greatest opportunities for a small merchant today," Dion says. "It's about knowing all your customers and knowing what they want. And the software allows you to do that."

A Plethora Of Ways To Pay

Increased competition means retailers must be ready to accept any kind of payment, Dion says. So POS systems are changing accordingly, enabling retailers to handle an increasing array of payment options, including credit, automated-teller-machine, and debit cards. (See "Testing The New Cash Cards," on Page 45.)

In the past decade, many small retailers who previously accepted only cash and checks have purchased credit-card readers and services.

Computer technology has made accepting credit cards much easier for merchants than it was when the old paper-based systems were more prevalent. Today's credit-card readers are connected via modem to card-processing companies, which provide instant purchase approvals, cutting transaction times and minimizing the risk to merchants. These systems also tie directly into the retailer's bank, eliminating the paperwork that once was necessary to process card purchases and providing instant deposit of credit-card sales amounts.

That's been a real benefit for Pam Lundquist, president of Silver Lining Inc., which has two stores at San Francisco's Fisherman's Wharf. The customers at WoundAbout, a toy store, and Kitty City, a cat-themed general-merchandise shop, are primarily tourists, and nearly half of them

use credit cards for purchases, Lundquist says. She notes that people who pay by credit card tend to make larger purchases than cash customers.

In 1988, after Lundquist approached her bank, Wells Fargo, to establish a merchant account, Silver Lining became one of the first small San Francisco merchants to switch to an electronic credit-card system. Her stores use a system from VeriFone Inc. of Redwood City, Calif., and leased from Wells Fargo. The system works with her noncomputerized cash registers.

Over the years, Lundquist says, the technology has improved to make it easier to take credit and debit cards and to satisfy customer preferences. She says the technology also has made it easier for employees to handle card purchases because it walks them through every step of the process.

New digital signature readers allow her customers to sign an electronic pad for verification, cutting down on the amount of paper that employees have to process.

The system instantly tells employees when a card is approved and when it is not, so store managers don't have to make decisions about accepting a customer's card or worry about collecting on bad accounts. That saves time at the register, and the direct link to the bank saves time in the back office.

"VeriFone saves time, and it definitely saves money," says Lundquist. "And it's much more secure because the charges go directly into my account."

Companies will soon be able to bring electronic payment systems directly to customers. Nova Information Systems Inc. of Atlanta has introduced a wireless card-processing service called Traverse, which allows companies such as delivery and service firms to take credit cards as payment at customers' homes and offices.

Traverse uses cellular technology to transmit data from a portable card reader back to the card-processing service. Traverse and similar radio-frequency wireless card readers now on the market allow restaurants to take card payments at the customer's table.

Finding The Right System

While POS and electronic-payment technologies offer small merchants many benefits, adopting them can be difficult and confusing. Retail consultant Dion notes that there are more than 360 POS-software vendors, with some specializing in specific types of retail environments such as shops, service stations, or restaurants. Other vendors make software only for specific POS hardware.

Dion says the large number of vendors makes it hard to select and configure a system. He suggests that small retailers analyze their needs and talk with other compa-

Testing The New Cash Cards

The "cash or charge" payment decision has taken on a new dimension at Gartner's Hardware in New York City, where some customers are using plastic to pay in cash.

Gartner's is one of more than 700 merchants on Manhattan's Upper West Side participating in the first sizable U.S. trial of so-called smart cards—which look like traditional credit cards but, in effect, are cash. The trial is a joint venture by two New York-based financial institutions, Chase Manhattan Corp. and Citibank, which have distributed smart cards to 50,000 of their customers.

A smart card, also called electronic cash, contains a computer chip that lets the user withdraw money from checking or savings accounts at automated teller machines or at personal computers and store the withdrawn amount on the cards. The user makes a purchase by entering a personal identification number (PIN) on the merchant's card reader, and the price of the product or service is deducted from the amount of money stored on the card.

Unlike debit or check cards, smart cards do not deduct money directly from customers' checking accounts when they are used to make purchases.

Originally, smart cards—which have been popular in Europe for more than 10 years—functioned like prepaid telephone cards and were discarded when their cash value was depleted. Prepaid cards have been tested in the United States on some college campuses and at businesses such as copy centers and self-service laundries for relatively inexpensive purchases.

Smart cards that were similar technologically to those being tried now in New York were first tested in the United States during the 1996 Summer Olympics in Atlanta. The Atlanta cards were sold in $10 and $100 denominations, and users couldn't add more value to them.

Newer stored-value cards like those being tested in New York can be reused. They are kept in an "electronic wallet," a plastic case with a small display that shows the amount stored on the card.

San Francisco-based banking company Wells Fargo has been testing the cards among its employees there.

At Gartner's, only two or three customers a day use the cards, says Neil Ragin, president. "They're probably just doing it as a curiosity more than anything else."

But industry experts predict that use of the cards will explode in the United States in the next five years. Market-research firm Dataquest of San Jose, Calif., projects that more than 1.2 billion smart cards will be in circulation worldwide by 2001.

Besides needing to gain support from consumers and merchants, smart cards, like credit cards and ATMs before them, face other obstacles. For example, there is no standard for electronic cash. The e-cash systems being used in the New York City trial are Visa International's Visa Cash and MasterCard International's Mondex.

In each form of e-cash, amounts of money are downloaded onto and subtracted from a chip on the card. The systems have different underlying technologies and software that are not compatible. The systems require merchants to have separate card readers—attached to their point-of-sale systems—to process each kind of card.

Moreover, consumers aren't likely to use smart cards until merchants buy and install the systems. And "until the banks have deployed the cards to consumers, the merchants have no incentive to accept them," says Stephen Fein, vice president with Electronic Card Systems Inc., a card-processing company in Los Angeles.

Purchasing a card reader will cost the merchant about $200, says Fein. Banks' fees charged to merchants for processing transactions have yet to be determined.

Merchants in the New York testing received free card readers and free processing of transactions, but banks such as Chase and Citibank intend to charge for both eventually.

Market researchers at Forrester Research Inc. in Cambridge, Mass., forecast that most early smart-card users will be making purchases over the Internet. To do this, a user enters the PIN on his or her PC. That activates a peripheral device on the PC that subtracts the amount from the card and sends the cash to the World Wide Web site.

nies of their size and business category about how their systems work for them.

"Software for the retailer is not a one-size-fits-all situation," says Dion. "Retailers want this technology to help them serve their needs better. But the poor retailer is facing an ever more daunting task to do that."

Computer Sciences' Newdom says some small retailers expect to purchase software off the shelf only to find that they have to pay more for advanced functions such as inventory tracking and customer profiling. She says firms should purchase software that will grow with them as their needs increase.

"Don't buy for today; buy for tomorrow," Newdom says. "You want something flexible enough to meet your current needs. You need something you won't outgrow very quickly. And you want something modular that will allow you to add on both equipment and functions." NB

PHOTO: ©ROBERT HOLMGREN

An electronic *credit-card system saves time and money for retailer Silver Lining Inc., says the company's president, Pam Lundquist.*

Lining Up For Interactive Kiosks

Expect to see more computers in retail stores. Interactive kiosks powered by personal computers are being used increasingly by retailers and other small companies to give customers information about products and services and, in some instances, to allow them to make purchases.

Shoppers at CarMax, a nationwide chain of used-car "superstores" based in Richmond, Va., can use a kiosk to get information about cars in stock, including prices, options, and location on the lot. American Greetings, based in Cleveland, has placed kiosks in some card shops, drugstores, and supermarkets across the nation to let shoppers create and purchase customized greeting cards.

Smaller firms are using kiosks as well. At self-service kiosks in some supermarkets in the Washington, D.C., area, customers of ProTix Inc., a ticket vendor based in Madison, Wis., can obtain free tickets for special exhibits at the Smithsonian Institution museums and can buy tickets for local concerts and sporting events. Kiosks in the do-it-yourself ceramics stores of Color Me Mine Inc., based in Van Nuys, Calif., contain clip-art images that customers can use to decorate the ceramics pieces they purchase in the store.

"They're being used for product knowledge so the customer can get a lot of questions answered themselves," says James E. Dion, senior partner with J.C. Williams Group, a retail consulting firm in Chicago. By using kiosks to give customers information about items that aren't in stock but can be ordered, Dion says, retailers can minimize inventory.

In essence, kiosks are computers equipped with software designed to guide people to information, help them accomplish a task, or effect a transaction. Kiosks can provide text information, graphical presentations, and video and sound clips.

The computer usually is disguised within a display case. Customers interact with the computer by touching one of the option icons on the screen. Information is then provided from a CD-ROM or a digital videodisc (DVD) player, or from a database on a network-server computer. Dion says a small retailer can buy and install a kiosk, including hardware and software, for about $3,000.

Market-research firm Frost & Sullivan of Mountain View, Calif., estimates that the market for sales of interactive kiosks to businesses and other establishments will grow to $2.94 billion in 2003, up from $369.7 million in 1996. Stephen Pearson, an analyst with the firm, says consumers are getting used to the technology much as they became accustomed to automated teller machines.

"ATMs helped pave the way for their use," Pearson says. "Kiosks can help automate some service-type functions. And they can eliminate things like standing in long lines. They are really more convenient and faster." He says 72 percent of retail kiosks can be used for purchases.

However, Pearson and Dion say that interactive kiosks won't work for all retailers. Companies must create customized content to meet their specific needs, and doing so requires both technical and creative skills.

Before entrepreneurs install a kiosk, they should consider how it will help their business or serve customers better. "The questions are whether you have information to put on it and whether your customers will use it," Dion says. "As a retailer, you have to ask whether a technology is helping the customer. If you can't quantify it, you shouldn't use it."

MANAGING

Workers Are Not The Usual Suspects

When employees stand accused of crimes outside the workplace, employers must be careful in deciding how to handle them.

2

By Janine S. Pouliot

What would you do if one of your employees were arrested for shoplifting or charged with an even more serious crime?

Let's say that you fire the worker on the strength of the charge and that the employee is acquitted. Now you're the one on the legal hot spot. Your former employee could sue you for wrongful termination. And legal experts say the former worker would have a very strong case.

Because the U.S. judicial system presumes innocence until guilt is proved, employers must be careful how they handle employees accused of crimes. Jeffrey G. Allen, a Beverly Hills, Calif., employment attorney, says a company should have a policy that's fair to everyone.

Consider these steps:

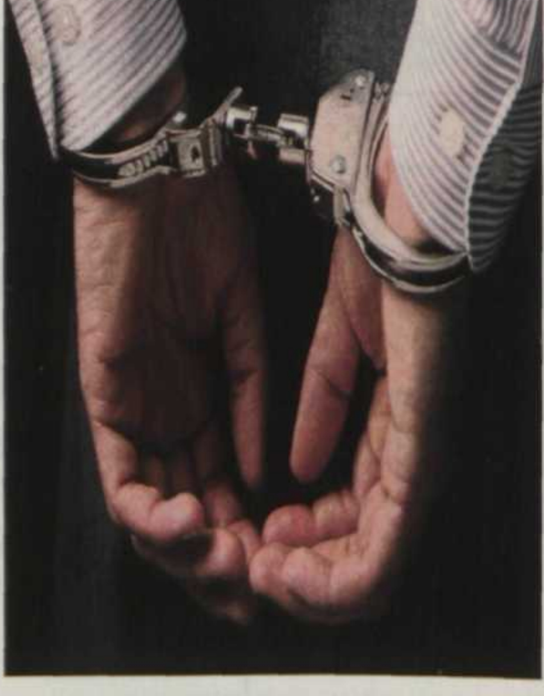
Confer with an attorney on the law in your state. Laws on termination resulting from arrest vary widely, says Allen. For example, California requires that there be a felony conviction before an employer has grounds to terminate. Laws in Georgia, New York, Pennsylvania, and Washington dictate that an employer notify a worker before seeking information related to an arrest, he says.

Evaluate your options. Firing is not your only choice when a worker has been arrested. You can take no action, of course. Or you can suspend a worker with pay pending the outcome of judicial proceedings. If you suspend without pay, you would need a solid basis for doing so, and you might have to provide back pay if the person is acquitted.

Analyze your motives for wanting to fire someone accused of a crime outside the workplace. If the offense is unrelated to job performance, you probably have weak grounds for firing. "This is an issue of discrimination, just like any other violation of protective legislation," says Allen. "It's really no different than if you let someone go because of their religion or gender. It's unrelated information."

On the other hand, some offenses automatically place the employee under suspicion at work. "If your controller is arrested for embezzling funds from his church group, it's as related a crime as I can think of," says Allen. In such a case, an employer would have the right to begin an internal investigation into the charges.

Ask lots of questions. Do your homework on the charges brought against your employee, says employment attorney Rita Risser, principal at Fair Measures Management Law Consulting Group in Santa Cruz, Calif., and the author of *Stay Out of Court! The Manager's Guide to Preventing Employee Lawsuits* (Prentice Hall, $19.95).



"An investigation is necessary because otherwise the information is hearsay," says Risser. "Talk to witnesses and the arresting officer, review any documentation, look at all the evidence. But the most important step is to interview the accused."

That's the step that employers typically skip, sometimes to their regret, Risser says. "Often the evidence seems overwhelmingly against the accused," she says. The employer presumes that an interview would be unnecessary because the employee would simply deny the charges. But unless the investigation is completely unbiased—and the interview can help support such a claim—a termination decision may not be upheld by the courts.

Ensure unbiased treatment. Be careful not to take action that discriminates on the basis of race, sex, religion, age, or any other areas covered by Title VII of the Civil Rights Act of 1964 as amended, says Paul Tobias, founder of the National Employment Lawyers Association and co-author of *Job Rights & Survival Strategies* (NERI, $19.95).

"If, for example, a black male is charged with a crime, you can't treat him any differently than you would a white male charged with the same crime. The identical policies must apply across the board," says Tobias.

Tread softly. Never do anything that would tarnish the employee's reputation in or out of the workplace. Otherwise you could face a defamation-of-character lawsuit. Don't tell other employees that the accused worker was fired for committing a crime if the worker hasn't been found guilty.

And don't humiliate the accused worker publicly. Says Gary Simpson, an employment attorney in Bethesda, Md.: "Don't walk the person out of your company accompanied by armed guards. Try calling him at home to discuss the issue. Why go out of your way to injure his pride and dignity?"

Protect other workers. Though you must safeguard the rights of the accused and shield the person from harassment by other workers, you also must protect the safety of other employees. If a worker has been charged with a violent crime, you may have reason to fear for the well-being of your staff while the worker is out on bail.

"It may be prudent during your investigation to suspend the employee with pay to separate [him or her] from your workplace," suggests Risser. "Sometimes it's absolutely critical that the accused be barred from the premises." Moreover, she adds, it's well within your rights to do so. NB

Janine S. Pouliot is a free-lance writer in Green Bay, Wis.

CONTRACTING

Certifying Ownership Of Women's Firms

A national standard verifying that a company is owned and run by women would open doors of opportunity for those firms.

By Sharon Nelton

PHOTO: ©JOHN ZICH

Without certification, *women's businesses "can't even pass go," says Lauren R. Leifer of Compdisk, a technology firm in Morton Grove, Ill.*

Many women business owners want something that minority business owners have: a national standard of certification. Such a standard would establish that a business is owned and run by a woman, just as the certification program of the National Minority Supplier Development Council, based in New York City, establishes ownership and control of minority firms.

Help is on the way. National certification efforts are being spearheaded by two groups—the Women's Business Enterprise National Council (WBENC) in Washington, D.C., and the Women Business Owners Corp. (WBOC) in Palos Verdes, Calif. Each is supported financially by large corporations and works in concert with a small number of local and regional efforts around the country.

"Certification is a process which documents that a business is 51 percent owned, managed, and controlled by a woman or women," says Susan Phillips Bari, president of the WBENC. It enables women business owners to market their products and services to corporations and government entities that have special programs to expand opportunities for women-owned businesses but require certification.

A Host Of Pluses

Even if your firm hasn't been certified but is selling to a large corporation, certification may open a door in another part of the company, says Lauren R. Leifer, president of Compdisk in Morton Grove, Ill. The $4 million firm replicates floppy disks, compact discs, and digital videodiscs.

For women competing for contracts in male-dominated industries such as construction and manufacturing, certification helps prove that they're not simply a "front" for a firm really controlled by men.

Ideally, a uniform certification standard would be accepted by every corporation and government agency. A national clearinghouse would offer one-stop certification.

Still, becoming certified won't be easy. Leifer, whose company was certified three years ago by the Women's Business Development Center (WBDC) in Chicago, says the process consumed 40 hours each of two employees' time.

The WBDC—which has a reciprocal arrangement with the WBENC—and other certifying agencies typically visit applicants' businesses. They review financial statements, tax returns, lease agreements, corporate resolutions, licenses, stock certificates, bank signature cards, client references, and copies of contracting agreements. "It's very intense," says Leifer.

Applicants pay $150 to $300, depending on the local center that does the certification. But the real cost of certification, with its detailed investigation and on-site visits, is much higher—hence the need for corporate support of such efforts.

Regional Roots

The WBENC got its start last year through the efforts of local and regional women's business development centers, such as the WBDC and the North Texas Women's Business Council in Dallas. It has certified about 1,500 women-owned businesses through such centers.

The WBOC, which launched its certification initiative early last year, is a sister corporation of the National Association of Women Business Owners (NAWBO) and its research arm, the National Foundation for Women Business Owners, both based in Silver Spring, Md.

According to E. Jill Pollock, a member of the WBOC board and owner of Pollock Consulting Group, a Detroit human-resources consulting firm, the WBOC has certified nearly 350 woman-owned businesses, again through local entities, including three NAWBO chapters. More than 100 corporations and government agencies accept its certification.

There's some talk that the two organizations might get together. "I think that would be a laudable goal, and we have begun talks that have the potential of that result," says Pollock.

Certification offers no guarantee that a woman-owned company is going to get additional business, says the WBENC's Bari. "It's like going out and getting a hunting license. Getting the license doesn't mean you're going to bag a deer. It just gives you permission to go into the woods and shoot."

To Contact The Groups

You can write to the Women's Business Enterprise National Council at 1156 15th St., N.W., Suite 1015, Washington, D.C. 20005, or call (202) 862-4810. The council's World Wide Web site is *www.womenconnect.com/wbenc.*

The Women Business Owners Corp. can be reached at 18 Encanto Drive, Palos Verdes, Calif. 90274-4215; (313) 203-3312. The corporation's Web site is at *www.wboc.org.* NB

MANAGING

When Customers Are Bad Apples

Dealing with that difficult 5 to 10 percent is a challenge for small firms—but one they can meet with the right approach.

By Jenny C. McCune

Into every business owner's lap a few difficult customers must fall. Once you've been on the receiving end of their ire, you know why they're called "customers from hell."

Just ask Kevin Wyman, owner of Offroad Outlet Inc. in Redmond, Wash. He knows all about tough customers from selling and installing accessories for trucks and sport-utility vehicles.

One recent scrape involved a Jeep owner who needed a hard top for her vehicle. She balked at the price of a new one, but Wyman happened to have a used one. He offered to paint the used top to match the Jeep and sell it for $1,000, half the price of a new, unpainted top. The customer accepted.

A couple of weeks later the woman called to complain about vibration and noises. After inspecting the Jeep, Wyman told the woman that the top needed weatherstripping at a cost of about $60. The woman and her boyfriend demanded that Wyman install the weatherstripping for free. To press their demands, they began complaining vehemently.

"I was mystified," Wyman says. "The boyfriend kept on saying they wouldn't pay $600, and I kept on telling him, 'No, we're talking $60, not $600.'"

Ultimately, Wyman agreed to remove the hard top and give the woman a refund. "We haven't heard anything from them," Wyman said a couple of weeks later, "so hopefully it's finished."

Customer-service experts say that 5 to 10 percent of customers turn out to be difficult. Moreover, such customers appear to be growing in number and seem to be more ornery than ever, says Karen Leland, coauthor of *Customer Service for Dummies* (IDG Books Worldwide, $19.99).

"Consumers are getting a lot less patient," Leland says. "They're more apt to get fed up and annoyed than in the past." Fortunately, 90 percent of nightmare customers are "made," Leland says. That is, they're irate for a reason—an order is late, a product breaks, there's a mix-up in shipping—but it's something that a small-business owner can either fix or try to prevent in the future.

PHOTO: ©PAUL SOUDERS

His dog, Gertie, *has a far better disposition than some of the customers that Kevin Wyman—owner of Offroad Outlet in Redmond, Wash.—has had to handle.*

Elementary Education

One of the worst customers a small business can encounter is someone who doesn't know anything about the company's product or service and stubbornly refuses to acknowledge that ignorance. Marilyn Jones, president of Consolidated Printing Company Inc., a 20-employee commercial printer in Chicago, has faced this problem.

Jones' firm was about to "dismiss" a customer four years ago because the customer was so difficult to work with. "It was a big-money account, but [the customer] was short-tempered and nasty," Jones recalls.

The customer clashed so often with the Consolidated Printing representative that Jones took over. She began by analyzing the customer's behavior. "I realized that she wasn't secure in her job. She didn't know how to spec a contract and wasn't willing to admit it," Jones says.

To turn the customer around, Jones figured out how to educate her without making her feel stupid. "I didn't talk down to her, but I would translate printing terms so she could understand what she was doing," Jones says. "I'd say 'shiny paper' instead of 'glossy.'"

With careful nurturing in the form of patient education about the printing process, the difficult customer turned into a Consolidated Printing regular.

Dealing With Indecision

Tony Harrison, a manager at a 12-employee multimedia graphic-design shop in Boise, Idaho, says the toughest customer to please doesn't know what he wants but doesn't mind wasting your time and money as you try to figure it out. You may not realize you have this kind of customer until he has rejected rounds of your hard work.

One such client, a computer-hardware manufacturer, visited Harrison's company, Oliver, Russell & Associates, last spring. The client needed help building a site on the World Wide Web.

The company's owner told Harrison that he wanted his products to be illustrated using animation rather than photographic images. Harrison's firm produced several prototype Web pages.

The client was delighted—at first. "He called a couple days later to say it wouldn't work," Harrison says. "He had asked us for a rock. We had given it to him, but it turned out that our definition was different [from] what his office people were telling him."

So the multimedia company kept bring-

Jenny C. McCune is a free-lance writer in Bozeman, Mont.

ing out new rocks. The customer would approve them but have second thoughts after showing them to his employees. After several months, the project was put on hold, but not before Harrison's firm had spent at least $2,000 on it.

In hindsight, Harrison says, he should have worked harder to pin down the customer on his needs and should have met with the naysaying employees so he could have dealt with their criticisms directly.

Defusing Anger

Nightmare customers can get very angry. Whatever the source of the anger—the customer's ignorance, your mistake, or something else—the situation can be defused. Here are suggestions on what to do:

■ First, offer an apology—even if you believe the client is wrong. "It's not about who's right and who's wrong, it's about how your business makes money in the short and long term," says Kristin Anderson, co-author of *Delivering Knock Your Socks Off Service* (AMACOM, $16.95).

■ Gather all the facts. It's important to determine the chain of events that angered your customer. Interview the customer and any of your employees who dealt with the person and check records when appropriate.

■ Take action. Weigh the cost of the customer's demands compared with the cost of losing business.

Greg Garrison follows this three-step approach to calm angry customers at his Mr. Speedy Care & Wash in Hot Springs, Ark. "People come in with a dirty car. After it's cleaned, they'll see blemishes on the car and then point a finger at us," he says. If a customer lodges a complaint, Garrison asks a lot of questions before acting. For example, when a woman complained that the carwash broke her radio, Garrison interviewed her and his service crew about the matter. He also inspected the vehicle.

Garrison's fact-finding mission suggested that the carwash had done nothing to the woman's car antenna, but he didn't want to lose her business. So he had two employees spend 15 minutes fixing the antenna—a minimal investment for retaining a customer.

Remember that "the customer is always right" doesn't mean you have to put up with verbal abuse. Use author Leland's three-strikes-and-you're-out rule: "Tell the customer you'd like to help him but can't because of his language. Remind him of this three times, and if he doesn't comply, tell him you'll have to talk to him later on once he's calmed down."

Striking Compromises

Many "bad" customers are the result of a bad situation: A salesclerk is surly; your company doesn't respond quickly enough to a request; a product defect ruins the customer's day; or an order promised for Wednesday doesn't arrive until Friday.


PHOTO: ©PAUL S. HOWELL

Meeting with clients *regularly is one way to prevent them from turning into nightmares, says Leslie Cohen, a supplier to utility contractors.*

Any of these problems can create a situation that escalates into a heated exchange with a customer.

No matter what your definition of a customer from hell is, you can minimize the risk of a nasty encounter. Sometimes all it takes is spending time with the customer or striking a compromise.

Leslie Cohen, president of Cohen Industrial Supply Co. in Houston, believes in visiting customers' construction sites frequently as a preventive measure. His firm supplies pipes, valves, and fittings to underground utilities' contractors.

By making himself available for frequent discussions, Cohen gives customers a chance to air minor grievances before those grievances turn into big problems.

Sometimes a nightmare customer will mend his ways if you explain the problem and offer a choice of solutions. When Dave Lakhani owned the Computer Clearance Center in Boise, Idaho, he had a customer who routinely bought small-ticket software or hardware items and then expected hours of free support from the computer store.

The store couldn't afford to spend that much time with a customer without being compensated. Lakhani explained the problem to the customer and gave him three options: pay for computer classes offered by the store, pay for software and hardware installation, or pay an hourly consulting fee.

The customer chose to take a computer course and pay installation charges. He's now considered a good client.

When All Else Fails

Sometimes nothing works and a customer relationship fizzles. That's when it's time to "fire" a customer, says Cohen. He terminated one relationship even though the contractor was a good friend. "I just couldn't work with his people," Cohen recalls. "We agreed just to be friends."

LD&B, a Horsham, Pa., advertising agency, closed an account with a family business after the agency could no longer handle the bickering between family members during client meetings. "They had no understanding of business decorum, and [they] had one of our account reps in tears," says Mike Diccicco, LD&B's president.

The key is to end the relationship on a civil note, Diccicco says. Put the onus on your firm, not on the customer. Explain why you can't deliver what the customer wants and suggest alternatives.

Diccicco discovered that businesses can be naive about the likelihood of changing customers' objectionable behavior. "We'll see flaws and think we can change them. Well, sometimes you can't, and it's best to walk away," he says.

Of course, no business wants to lose customers. But you need to recognize why the customer is difficult and to figure out how—and whether—to save the relationship.

"I try to give my customers the benefit of the doubt, which is just how I'd like to be treated," says Wyman of Offroad Outlet. When trouble rides into his shop, Wyman now knows how to win the fight for good customers and to walk away from the really bad ones. NB

FINANCE

A Lending Niche Helps Small Firms

Small-business-investment companies offer firms an alternative to banks and venture capitalists when expansion money is needed.

By Joan Pryde

When Tom Stumb's company, the Potomac Group Inc. in Nashville, Tenn., started feeling growing pains in 1993, he knew the cure was an infusion of capital. He just wasn't sure where to turn.

The company had carved out a niche selling its computerized information service, MediFAX, to health-care providers. MediFAX is delivered through a desktop device that gives clients a quick, easy way to verify patients' health-insurance eligibility, among other things.

But after about eight years of selling the service, Potomac determined that it needed more money for marketing and for engineering MediFAX to include additional patient information.

Finding enough growth capital wouldn't be easy, however. Although the firm had annual revenues of about $7 million and was operating at the break-even point, banks were unwilling to lend to Potomac because it could not show a history of profitability.

Money was trickling in from individual investors, but no investor was in a position to provide the amount of capital Potomac was seeking. Stumb wanted to steer clear of venture capitalists because he knew they would demand at least a 30 percent ownership interest in the company.

Stumb needed another source. He found it after an acquaintance suggested that he contact Sirrom Capital Corp. of Nashville, one of about 300 small-business-investment companies in the United States.

This story is part of a continuing series on ways for small companies to locate the financing they need to run their businesses.

SBICs are private companies licensed by the U.S. Small Business Administration to provide debt and equity financing to start or expand small companies.

Sirrom Capital lent Stumb the $1 million he needed to expand Potomac and its MediFAX service. From 1993 through 1997, Potomac's annual revenues tripled to $21.7 million and its employment rose to 180 from 36. The firm's MediFAX customers now total 7,000.

"This was a cash-starved company until Sirrom came in," Stumb says. "With the funds from Sirrom, we were able to focus on growing the business."

PHOTO: DEAN LOFTIN—BLACK STAR

The cure *for the growing pains at Tom Stumb's health-information firm, the Potomac Group Inc. in Nashville, Tenn., was a transfusion of capital obtained from a small-business-investment company.*

Creating Household Names

Congress authorized creation of SBICs in 1958. Since then, SBICs have invested approximately $13 billion in about 80,000 small businesses in nearly every state. Some of those businesses—such as America Online, Inc.; Federal Express Corp.; Outback Steakhouse Inc.; and Apple Computer, Inc.—have gone on to become household names.

The idea behind SBICs is to "bring venture capital down to what we would call the smaller end of small business," says Lee Mercer, president of the National Association of Small Business Investment Companies (NASBIC), an industry organization based in Washington, D.C.

SBICs help small firms through long-term loans, ownership investment, or a combination of the two. SBICs are barred by federal law from buying a controlling interest in a firm.

SBICs usually favor investing close to home. Their average single-business investment was $770,000 in 1996, and 75 percent of their investments that year were $500,000 or less, according to NASBIC.

SBICs get their money from their owners and from individual investors. The keys to becoming an owner, the SBA says, are to show "a real interest in serving small-business concerns" and to have expertise in investing in companies. Owners must put up at least $5 million of their own capital.

A business is eligible to obtain financing from an SBIC if its net worth is less than $18 million and it has had average after-tax earnings of less than $6 million for the previous two years. Although SBICs invest in start-up companies, they generally focus on providing expansion capital to firms that, like Potomac, have had success but need more money to achieve growth.

About 85 SBICs are "specialized," meaning they target "socially or economically disadvantaged" small businesses, typically minority-owned firms, the SBA says.

Making A Match

Stumb learned of Sirrom through investors who earlier had provided financing

for Potomac and were investing in the Nashville SBIC. Stumb contacted Sirrom, and the result was a $1 million, five-year loan from Sirrom with a 12 percent interest rate.

Potomac was the type of investment that Sirrom was looking for: It was not a start-up; it had annual revenues above $3 million; its financial needs were in Sirrom's range of $500,000 to $4 million; and it was in health care—one of Sirrom's two preferred industries (the other is telecommunications).

"They had been successful. They had grown the business from nothing to $7 million in revenue," says George Miller, Sirrom's president.

With the loan, Potomac plans to expand MediFAX to give health-care providers additional types of patient information, such as the status of pending insurance claims or the documentation for authorizations of physician referrals. The company also plans to expand the number of insurance carriers linked to the MediFAX service.

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>
> —Lee Mercer, President, National Association of Small Business Investment Companies

Finding An SBIC

Stumb's discovery of Sirrom through word of mouth was not unusual, says NASBIC's Mercer. Small-business owners typically hear about SBICs from their lawyers or accountants. In fact, it's difficult for a small-business owner to learn about an SBIC in any other way. Like Sirrom Capital, most SBICs don't carry the designation in their names, so it's not immediately apparent that they are SBICs.

The SBA and various industry organizations provide lists of SBICs. The lists provide not only addresses and phone numbers but also information such as the size of loans or investments that an SBIC prefers to make and whether it limits its investments to certain industries. (See "For More Information," below.)

Because most SBICs prefer to invest locally, small-business owners should start their search with those in their area before calling SBICs elsewhere.

To obtain capital from an SBIC—as with any financing—a company owner must have a detailed business plan to convince the lender that he or she is a good credit risk and has a worthy business concept.

Citing the opportunity for growth that Sirrom gave his company, Stumb says SBICs "have proven there's a viable niche in the capital business between venture-capital firms and commercial banks." NB

For More Information

The following agencies and organizations offer resources that can help you find a small-business-investment company.

The U.S. Small Business Administration includes a state-by-state listing of SBICs on a section of its World Wide Web site, *www.sbaonline.sba.gov/inv.* The listing includes each SBIC's address and phone number and the name of a contact person. To get a free copy of the list by mail, write to: Associate Administrator for Investment, U.S. Small Business Administration, Washington, D.C. 20416. You can also call (202) 205-6510 or fax your request to (202) 205-6959.

The National Association of Small Business Investment Companies (NASBIC) offers a number of publications to help small-business owners find an SBIC and complete the financing process successfully. *Today's SBICs: Investing in America's Future* is a free, 12-page brochure containing general information on the SBIC program. *Venture Capital, Where to Find It* is a directory of SBICs, including both NASBIC members and nonmembers. Price: $20.

For either publication, contact the NASBIC at 666 11th St., N.W., Suite 750, Washington, D.C. 20001; (202) 628-5055. Electronic mail: *nasbic@nasbic.org.*

The National Association of Investment Companies (NAIC), a trade association for venture capitalists and specialized small-business-investment companies that target minority-owned small firms, publishes a membership directory that can be obtained by contacting the NAIC at 1111 14th St., N.W., Suite 700, Washington, D.C. 20005; (202) 289-4336. Price: $30. The NAIC's Web site is *www.envista.com/naic.*

Family Business

Issues that appear to be the easiest to handle can become the most difficult to resolve.

OBSERVATIONS

Some 'Hard' Lessons—Or Are They 'Soft'?

By Sharon Nelton

PHOTO: T. MICHAEL KEZA

Two recent books seem to approach family business from opposite directions—the "soft" side and the "hard," or technical, side.

Let me make it clear that I've always been uncomfortable with the designations "hard" and "soft"—they're also used in my field, journalism, as in "hard" news and "soft" news. In my opinion, what's seen as "hard"—facts, figures, bottom lines, and the like—is often easier to embrace and grapple with than what's considered "soft"—issues of human relationships, for example. In other words, "soft" issues are usually much harder to deal with because emotions are involved.

That said, the "soft" book here is *The Best of the Human Side*, a collection of articles by Leslie Dashew, a family-business authority in Atlanta who calls her consulting firm Human Side of Enterprise.

In many ways, Dashew's book is a series of meditations about business, especially family business. In one chapter, she reflects on the movie "The Lion King" as a parable for family-business succession. The film can be a "wonderful conversation starter" for business families, she points out, and it offers them an opportunity to consider their own transition processes.

In a chapter on communication, Dashew observes that "the subjects that are the most difficult to discuss are often the most important to discuss."

Bridging communication gaps, she says, requires three major components. One is structure, consisting of channels, which could include councils, regular meetings, and written communications such as newsletters and reports. Another is a safe environment in which people feel trusting enough to communicate openly.

The third component consists of skills. The development of skills, she writes, includes the courage and confidence to overcome barriers—for example, asking for information (and perhaps overstepping your bounds) or sharing feelings (and perhaps risking the loss of someone's approval).

On the "hard" side is *The Family Business: Power Tools For Survival, Success, and Succession*, by brothers Roger C. Allred, a CPA, and Russell S. Allred, a marketing consultant. Their firm, Allred & Associates, Inc., is in Bakersfield, Calif.

The authors' "power tools" (the very words convey the image of "hard") are 275 strategies a reader can use to evaluate the strengths and weaknesses of his or her business and, if necessary, to shore it up.

Power Tool No. 5, for example, is "Management knows the objectives of the family." Power Tool No. 212 reads: "The company complies with all governmental safety policies." And Power Tool No. 267: "Immediate action is taken to correct product flaws."

The power tools—each explained in more detail—are organized by topics such as family, marketing, accounting, and production. The Allreds say their aim is to enable you to be your own consultant.

But be forewarned: Many of the power tools deal with the "soft" side, too. Family issues are typically ignored by business schools, write the Allreds, "because 'they are not business issues.' These 'nonissues' are what usually destroy successful family businesses and, sometimes, successful families.

"Family businesses have emotional issues, and they must be considered. Ignoring the passions that arise in a family business is like turning your back on a fire in your stockroom. You can ignore it for a while, but it will eventually destroy your business."

The Best of the Human Side can be ordered for $17.45 from Human Side of Enterprise, Suite 700, 210 Interstate North Parkway, Atlanta, Ga. 30339; (404) 252-7113. *The Family Business* (Berkley Trade, $12) is available in bookstores.

Both books are—pardon the pun—softcover. ■

MARK YOUR CALENDAR

Feb. 4, Los Angeles

"Developing the Business Family" features Kelin Gersick, a nationally known family-business author and consultant. Call the Family and Closely-Held Businesses Program at the University of Southern California; (213) 740-0416.

Feb. 18, Springfield, Ill.

"Healthy Family and Business Interrelations: The Role of Family Meetings and Councils" is the topic of Drew Mendoza, a family-business expert at Loyola University Chicago. To be repeated Feb. 19 in St. Louis. Contact Rich Lumma, director of the Family Business Forum of Southern Illinois University at Edwardsville; 1-800-692-4333.

Feb. 24, Indiana, Pa.

"Making It Over the Hurdles: Lessons From Experience" is a program sponsored by the Indiana University of Pennsylvania Center for Family Business. To be repeated Feb. 25 in Pittsburgh. Call Cindy Iannarelli; (412) 221-8924.

March 7-8, Dublin, Ohio

The "4th Ohio Conference for Family Businesses" will focus on better communications and people-to-people relationships as well as changes in estate- and income-tax laws. Call Business & Estate Planning Services Unlimited; (614) 871-0114.

March 13, Cambridge, Mass.

"Love and Money: Understanding the Dynamics of the Family Business System" is a daylong seminar for family-business members and professionals who work with family firms. Call the Cambridge Center for Creative Enterprise; (617) 576-5700.

How To Get Listed

This list of family-business events features national and regional programs that are open to the public. Send your item three months in advance to Family Business, Nation's Business, *1615 H Street, N.W., Washington, D.C. 20062-2000.*

Case Study: A Role For Life Insurance

At age 66, Henry Fickett knows that getting second-to-die life insurance—a joint policy insuring both husband and wife but payable only on the second death—won't be easy. He knows he drinks too much and that his wife's heart condition is worsening.

"We've got a net worth of about $5 million, almost all tied up in the business," says Henry. "All I'm trying to do is protect my children from heavy estate taxes," which a second-to-die policy could help accomplish. "But now that's only half my problem. How did I know that by raising the issue, I'd open up a can of worms?"

Henry's suggestion that he and Carol, his wife and business partner, obtain a second-to-die policy led her to want to review their entire estate plan. And that means addressing the issue of their two children, Hank and Betty, who work at Fickett Springs, the family's $7 million water-purification facility. Hank is chief operating officer; Betty is an office clerk who is so obstinate that Hank wants to replace her.

Henry is convinced that ownership in the business must pass to those who work in it. Carol argues: "Betty is entitled to her fair share. We have two children. And whether or not they both continue to work in the business, it's going to pass on to both of them."

Their discussions have grown so heated that Carol has even threatened to end their 45-year union. Henry feels that leaving ownership in the business to Betty would be like putting a noose around his son's neck. "Could life insurance be the answer?" he wonders. "Or, given our health situation, will the premiums be out of reach?"

ILLUSTRATION: TROY THOMAS

Response 1

Equalizing Legacies

Since Hank appears to be a capable manager, the business should go to him, with an equal distribution of assets to Carol.

Assuming an estate value of $5 million, with $4 million represented by the business and $1 million in other assets, Hank and Betty should *each* receive $4 million. With a $6 million life-insurance policy, Betty would be paid $1 million from other estate assets plus $3 million in life-insurance proceeds, and Hank would receive the business. The remaining $3 million would be used to pay the estate taxes.

I recommend second-to-die life insurance, available to couples even when one spouse is uninsurable. Combined with an irrevocable trust, this policy assures that the proceeds are outside of the second-to-die spouse's estate for tax purposes. While premiums may be substantial, life insurance will still be the lowest-cost alternative available to settle the estate.

Or Hank could enter into a buy-sell agreement with Betty for her ultimate half-interest in the business. Hank would insure his parents for half the value of the business and, upon the death of the second parent, would receive the proceeds and buy out Betty's share.

If the corporation owns the policy, it could enter into a stock-redemption agreement for the stock ultimately received by Betty. (Hank would receive his 50 percent share of the company directly by bequest.) With Betty's 50 percent interest in the company redeemed, Hank would emerge from the transaction as 100 percent owner.

Any combination of these scenarios should placate Carol, since both siblings would receive equal legacies.

Joseph F. Blum, a consultant based in Hingham, Mass., and chairman emeritus of the Northeastern University Center for Family Business in Boston.

Response 2

Separate The Rights

Succession and wealth-transfer planning demand clarity of objectives and of the present situation, consideration of alternatives, and agreement by the older generation. Henry and Carol have difficulty envisioning how Hank could have control of the business and Betty could receive her fair and equal share of the estate.

They fear what might happen, and they may be unwilling to view alternatives objectively unless their fears are addressed. To be successful, the transfer process requires that each family member's needs, wants, and fears be identified. Henry and Carol can then evaluate whether the current estate plan, the business structure, or life insurance can address those needs, wants, and fears.

For example, perhaps the business could solve the "control versus equality" issue by separating the three major rights of ownership—the right to control, the right to appreciation, and the right to income. Henry and Carol believe that a share of stock must embody these three rights, and they cannot see the alternatives for separating these rights of ownership.

Hank, for example, could eventually receive sole control of the business by being awarded voting common shares; Betty could be awarded nonvoting common shares, providing her with equal value through appreciation and income rights.

Like this technique, using life insurance to "equalize" the estate is just one of the many alternatives that can acknowledge the family's unique concerns and provide for a well-conceived and agreeable succession and wealth-transfer plan.

PHOTO: BARRY STAVER

Thomas E. Zanecchia, president of Wealth Management Consultants, Inc., a Denver firm that provides business, tax, and investment counsel internationally.

This series presents actual family-business dilemmas, commented on by members of the Family Firm Institute and edited by Paul I. Karofsky, executive director of the Northeastern University Center for Family Business in Dedham, Mass. Identities are changed to protect family privacy. The authors' opinions do not necessarily reflect the views of the institute. Copyright © by the Family Firm Institute, Brookline, Mass.

Making It

Growing businesses share their experiences in creating and marketing new products and services.

Something To Sleep On

By Lana J. Chandler

When Kimberly Brown Knopf played high-school basketball, she was never the star athlete. "Usually I was on the bench, trying to get everyone else excited and motivated," she says.

Two decades later, Knopf is still motivating her team to succeed. But her team members now are her 85 employees at Mattress Warehouse, a Winfield, W.Va., retail chain with 11 stores in Kentucky, Ohio, and West Virginia.

In 1983, Knopf was single and living in Lexington, Ky., when she responded to a newspaper ad for a salesperson in a bedding shop. The interviewer's enthusiasm for the prospects of the business sparked her determination to run a shop of her own rather than someone else's.

She set her sights on West Virginia because it was "an untapped market," she says. "Entrepreneurship was already in my blood. I had seen my father and grandfather run their own businesses. The bedding business offered a product that had a higher average ticket price [over $400] than most retail firms with a fast inventory turn rate. Typically, the inventory is sold before the invoices are due."

Knopf began by "doing a lot of research in libraries," she says, and attending seminars offered by the U.S. Small Business Administration. Next, she prepared a business plan, estimating that it would take $25,000 to start her company, and showed it to the parents of her boyfriend, Ken Knopf (now her husband). Ken's parents let her use a certificate of deposit of theirs as collateral for borrowing half of the start-up money, and she secured the remaining $12,500 by selling 50 percent of the company's stock to Ken and his parents.

Initially, she purchased a franchise for $20,000. "I paid $10,000 down and leveraged the remainder out over time," says Knopf. "I used the rest of the money for advertising, signage, inventory, a phone system, rent, and other basic equipment." But she saw no long-term benefits in being a franchisee, and in 1988 she became an independent bedding retailer.

PHOTO: GARY TRUMAN

Dedicated employees *have helped put Mattress Warehouse and owner Kimberly Brown Knopf in a comfort zone.*

Although Mattress Warehouse was the first bedding shop in its market area, competitors have cropped up over the years. Several have tried but failed to mimic her chain, Knopf says.

In 1990, the supplier for more than half of Mattress Warehouse's stock opened a factory-direct store in the same market. "With only one week's notice, we were told our relationship was terminated," Knopf says. "The salesman on our account was an officer in [the competing] retail operation. He knew our markups, marketing plans, warehouse, distribution, and so on."

Although the supplier's store eventually went out of business, the competition it offered provided a turning point for Knopf's company. She diversified sufficiently to prevent the loss of one supplier from jeopardizing her business. Today, Mattress Warehouse buys from a variety of brand-name vendors and stocks several full lines of bedding products, such as mattress sets, daybeds, headboards, complete beds, adjustable beds, and children's beds.

Knopf's company guarantees customers the lowest prices in its market area. For 60 days after a purchase, a customer who finds the same product priced lower at another store can receive double the price difference. It's rare that a customer claims such a refund, Knopf says, because Mattress Warehouse keeps its retail prices low by using its purchasing volume to bargain for deep discounts from suppliers.

Such discounts, Knopf says, and other tactics, such as minimizing overhead, also enable the chain to offer value-added ser-

Lana J. Chandler is a free-lance writer in Charleston, W.Va.

vices usually associated with high-priced establishments. Such services include same-day or next-day delivery, financing options, setup of new bedding, and removal of old bedding.

Mattress Warehouse has received several retailing awards, including recognition from Serta in 1995 for outstanding growth in annual sales volume. And while Knopf, 38, won't release sales figures, she says the future looks bright for opening additional stores and enlarging existing ones.

Knopf credits her success to "a staff of highly competent, talented, and dedicated employees." Sales associates average six years on the job, and several employees have been with the company longer than 10 years, going back to the time she was still a franchisee. "People like to work here because they feel a sense of accomplishment," she says. "They have a certain amount of latitude to be creative and participate in the success of the company."

The company provides continuous training in leadership, management, communication, customer service, product knowledge, and computer technology. Every new employee visits a major mattress factory to see how the product is manufactured.

Five years ago, Mattress Warehouse introduced a profit-sharing program. Employees also receive year-end bonuses based on personal performance and company performance. Knopf is also big on promoting within the organization—some employees who started as delivery drivers now work as department or store managers. "Mattress Warehouse's employees are its greatest asset," Knopf says. "They are the differentiating and unique factor that will ensure the company's long-term success." ■

The Music Makers

By Julie Fanselow

When author Sarah Ban Breathnach was writing *Simple Abundance*—a self-help bestseller published in 1996—she discovered "Piano Reflections," a recording by a little-known classical pianist, Kelly Yost. Ban Breathnach listened to the tape every day as she worked, and she liked the music so much that she recommended it in her book and chose it as the accompaniment for the audiotape version of *Simple Abundance.*

Ban Breathnach's support boosted sales of "Piano Reflections" somewhat, but Yost's music had been finding an audience even before the author pitched in.

Since its release in 1987, "Piano Reflections" has sold nearly a quarter-million copies for Channel Productions, the small music label that Yost, 57, runs with her husband, Sam, 52. The recording's success has enabled the label to release other titles, including "Anne," a compact disc featuring the late Canadian composer Hagood Hardy's soundtracks for the popular family films "Anne of Green Gables" and "Anne of Avonlea."

Channel Productions has sold more than 460,000 copies of its seven titles, with an eighth—a Christmas album from Yost—set for release this coming fall. The company's annual revenues average between $300,000 and $450,000.

The firm has found its niche in the competitive music business, and it has done so from the unlikely base of Twin Falls, Idaho, a city of 33,500 that is far removed from entertainment-industry centers such as New York City, Los Angeles, and Nashville, Tenn.

Yost initially recorded "Piano Reflections" as a favor to a local funeral-home director who was tired of the dreary dirges he usually had to play at visitations and services.

Julie Fanselow is a free-lance writer in Twin Falls, Idaho.

When another friend, a bookstore owner, heard Yost's understated collection of Bach, Beethoven, and Brahms, she told Yost it would sell well in book and gift shops. So the Yosts held their breath and ordered 2,000 copies of the tape.

PHOTO: ©GLENN OAKLEY

Holding to an idealistic vision, *Kelly and Sam Yost have built a successful music label and production studio in Idaho.*

The shipment sold quickly, and "Piano Reflections" became a hit not just among funeral directors and booksellers but also with childbirth educators trying to ease the stress of labor and with teachers seeking to calm their classes. A year after releasing "Piano Reflections," the Yosts quit their regular jobs—he as a banker, she as a piano teacher.

In 1989, Channel Productions moved from the Yosts' home into a 1,300-square-foot rented office suite. By 1992, the company had bought a 6,200-square-foot building. Its custom-designed recording studio was used for Kelly Yost's third release, 1996's "Roses & Solitude," and the forthcoming holiday album. Together with the Yosts, Channel Productions' two full-time employees and one part-timer handle everything from telemarketing and customer service to shipping.

The Yosts say a major factor in Channel Productions' success is its base in Idaho, where the cost of doing business is low and where they can regularly retreat to the mountains and lakes to recharge their artistic batteries.

In fact, the Idaho location has helped the Yosts connect with book-, gift-, and record-store clients and radio programmers. Sam recalls a time he was riding a lift at the Sun Valley ski resort with a man who turned out to be an Arizona radio executive. By the time they reached the mountaintop, Sam had persuaded the man to listen to Kelly's music and to try playing it on his stations. Those stations joined the more than 500 that air Kelly's recordings.

The Yosts also attribute Channel Productions' staying power to a sense of mission not often seen in the music business. "We started out with an idealistic vision as opposed to a real commercial purpose," Kelly says. "We've adhered to that. If we're going to release music, it has to be good music that speaks to us, music that we want to share with the world." NB

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By Stephen Blakely

GETTING STARTED

Logging On For Desktop Publishing

I will be starting a typesetting and desktop publishing business out of my home. Where can I find out what I need to know about this venture?
K.C., Cincinnati

A good magazine covering this field is *Desktop Publisher's Journal*, published by Business Media Group in Topsfield, Mass. It tracks current desktop publishing developments and reviews new technologies and techniques.

Business Media Group took over the publishing of the magazine last year from the National Association of Desktop Publishers, which ceased operations because of a lack of revenue, according to Heather Surface, technical editor for the magazine. A yearly subscription is $36, but professional desktop publishers can qualify to receive the magazine for free. For more information, call 1-800-492-1014.

Desktop publishing, also known as DTP, is a computer-driven revolution in printing design and production that started in the 1980s and has made it easier and cheaper to create publications. For less than $10,000, a person can buy a computer, photo scanner, and printer that are powerful and sophisticated enough to produce full-color, professional-quality pages and graphics.

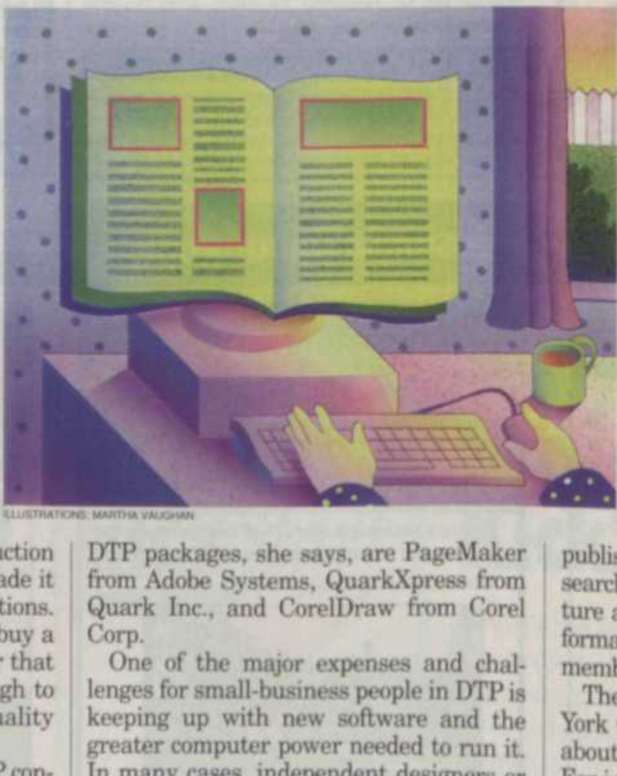
In recent years, an industry of DTP consultants and free-lancers has emerged. They produce everything from brochures, newsletters, and reports to posters, magazines, and books.

This development has changed the way many companies produce their publications, allowing them to hire outside firms to take on many design and prepress functions previously done in-house.

More recently, the growth of the Internet has led many people with DTP skills into electronic publishing on the World Wide Web, where they can incorporate video, sound, and other multimedia elements along with text.

Surface says that Apple Computer Inc.'s Macintosh computers used to be the overwhelming favorite among desktop publishers because of their superior ability to handle memory-intensive photographs, color, and graphics. While the Macintosh is still dominant in DTP, the use of IBM-compatible personal computers is growing rapidly as their graphics capabilities improve.

Surface notes that many software programs are available to meet specific publishing needs. Some of the most popular



ILLUSTRATIONS: MARTHA VAUGHAN

DTP packages, she says, are PageMaker from Adobe Systems, QuarkXpress from Quark Inc., and CorelDraw from Corel Corp.

One of the major expenses and challenges for small-business people in DTP is keeping up with new software and the greater computer power needed to run it. In many cases, independent designers or desktop publishers can get clients to purchase software required for a particular project.

According to Surface, a slowly growing trend in DTP is electronic transfer of entire documents: A DTP designer or technician in one location uses a computer, telephone line, and modem to transfer camera-ready documents directly to a printer's computer across town or across the country. This development is increasing competitive pressure and technical requirements for commercial printers as they seek to handle all major DTP software programs and maintain state-of-the-art equipment.

Sources Of Books For Black Children

Where can I find a list of sources of books for black children? I'm interested in starting a mail-order business for this market.
D.D., Rochester, N.Y.

One source to contact is the Multicultural Publishing and Education Council in Auburn, Calif., which includes publishers of books for minority readers of all ages. Call (916) 889-4438 for information.

A major professional group in the children's book sector is the Society of Children's Book Writers and Illustrators, in West Mills, Calif. It can be reached by calling (818) 888-8760. Membership is $50 annually.

The group is a network for exchanging information among writers, editors, illustrators, publishers, and agents. Members also include bookstore owners, producers of children's television, librarians, and teachers.

Another possible source is the Children's Literature Association in Battle Creek, Mich., which includes teachers, librarians, authors, and publishers. The association focuses on research and scholarship in children's literature and presents writing awards. For information, call (616) 965-8180. Individual membership is $65 a year.

The Children's Book Council in New York City is another source. It represents about 100 publishers of children's books. For information, call (212) 966-1990.

HOW TO ASK

Have a business-related question? Mail or fax your typewritten query to Direct Line, *Nation's Business*, 1615 H Street, N.W., Washington, D.C. 20062-2000; (202) 463-3102. Or transmit your question to our CompuServe address: 76436,1735. Be sure to include your address and telephone number.

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GETTING STARTED

Hands-On Care For Others' Pets

I am interested in opening a kennel. Is there an industry group I can contact for advice on this kind of business?
D.J., Mooresville, N.C.

The major organization representing this field is the American Boarding Kennels Association in Colorado Springs, Colo.

The association has meetings twice a year covering topics such as building, leasing, and operating commercial kennels. The group also sponsors certification programs to ensure a kennel's compliance with professional standards.

According to Jim Krak, executive director of the association, there are about 9,000 boarding kennels in the United States; the average kennel has 56 enclosures for pets.

"The industry is in transition from a mom-and-pop kind of business to chains and franchises," he says, noting that the main reason is costs.

Boarding kennels are regulated by state and local governments, which increasingly are restricting or prohibiting noisy outdoor runs and pet-exercise areas.

Indoor facilities can be soundproofed, which helps avoid conflicts with neighbors but also adds to the cost of building a kennel.

In addition, many states and localities impose environmental restrictions on the

disposal of pet waste, and use of flea dips and other chemical products on pets is subject to federal regulations. Complying with these rules can add significantly to a kennel's operating costs.

To offset these costs and become more profitable, kennels increasingly are offering services such as pet grooming and training in addition to boarding.

Insurance used to be difficult to obtain and expensive, but Krak says that a number of specialty underwriters have started serving the kennel business in recent years, which helped to lower rates.

According to data supplied by the Pet Industry Joint Advisory Council in Washington, D.C., 59 percent of American households have a pet. Dogs remain the most popular pet—37 percent of households have a dog—although dog ownership has leveled off. Cats are a close second at 32 percent of households, and ownership is growing slowly.

The council's research indicates that there has been little change in recent years in the ownership rates of "exotic" pets such as birds, reptiles, small animals, and fish. However, Krak reports that exotic pets are the fastest-growing segment in the kennel business, which is forcing kennels to adapt.

"Kennels used to be just for dogs, and a lot didn't even board cats," Krak says. "But now they're full service because you have to diversify your income. A lot of our members board birds."

Membership in the American Boarding Kennels Association is $165 a year. For more information, call (719) 591-1113. NB

December Poll Results

Readers' Views

Down On The IRS

The Internal Revenue Service has few friends among the *Nation's Business* readers who responded to a recent poll on the agency.

Half of the respondents to the Where I Stand poll in the December issue said they felt they had been treated unfairly or abused by IRS agents, one of the common complaints voiced last year during congressional hearings on IRS restructuring.

Three out of four respondents indicated they had been unsuccessful in getting good advice from the IRS in doing their taxes. They said they either could not get through to the IRS by phone for help or, if they did get through, they got either no response or bad advice.

The poll also indicated that most respondents believe they could not effectively challenge an IRS ruling in court or in the agency's appeals process.

Legislation to overhaul the IRS swept through the House in November, with representatives approving it 426-4, after House Democratic leaders and the White House gave their support to the measure. The Senate Finance Committee plans to look at similar legislation this year, and more hearings are expected.

The House bill would, among other things, set up an independent governing board for the IRS, as suggested by a bipartisan advisory commission last year. The legislation would also establish new taxpayer rights.

Here are the complete results of the poll:

Questions And Answers

Do you think the IRS is taxpayer-friendly?

Yes	6%
No	94

Have you ever been treated unfairly or abused by IRS agents?

Yes	50%
No	50

What has been your experience in seeking assistance from the IRS? (Check more than one if applicable.)

The IRS proved helpful	11%
Could not get through by telephone	37
Received no response to a query	17
Got bad advice	21
Have never tried to contact the IRS	15

Has your company's tax return ever been audited by the IRS?

Yes	55%
No	45

Do you believe that as a taxpayer you could challenge an IRS ruling effectively through administrative appeals or in court?

Yes	22%
No	78

Do you think you could file your tax return electronically by 2007, as the advisory commission envisions for 80 percent of all taxpayers?

Already file electronically and plan to continue doing so	8%
Do not file electronically but could do so	57
Will not be able to file electronically	35

Where I Stand

On Lawsuits

Lawsuits against U.S. businesses are continuing to increase, and some judgments have run into the hundreds of millions of dollars. Demands are increasing for legislative and judicial reforms to curb what critics are calling lawsuit abuse. (See the cover story, Page 12.) These questions seek your views on this issue.

Results of this poll will be published in the April issue of *Nation's Business* and will be forwarded to administration officials and congressional leaders. Send the attached, postage-paid Reader Response Card. Or circle your answers and fax this page to (202) 463-5636.

1

Do you think frivolous lawsuits are a problem?

1. Yes
2. No

2

Has your company ever been sued?

1. Yes, in a product-liability case
2. Yes, in a dispute over employment law
3. Yes, in a contract dispute
4. Yes, in another type of case
5. Never been sued

3

Should plaintiffs have to pay your legal fees if they sue you and lose?

1. Yes
2. No

4

Should limits be imposed on the scope and dollar amount of lawsuits a worker can bring against his or her employer?

1. Yes
2. No

5

Should a federal law be enacted to supersede conflicting state laws on the liability of a company if someone using its product is injured?

1. Yes
2. No

6

Could your company survive a major lawsuit that could cost millions of dollars?

1. Yes
2. No
3. Don't know

7

Should elected local and state judges be required to disqualify themselves from cases involving attorneys who contributed to the judges' campaigns?

1. Yes
2. No

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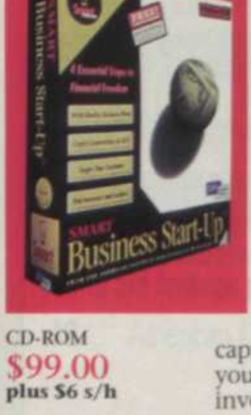

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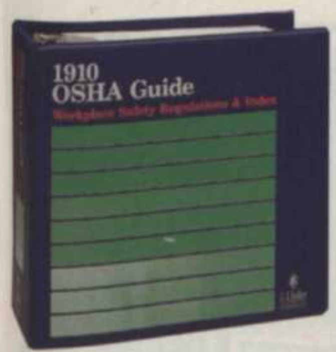

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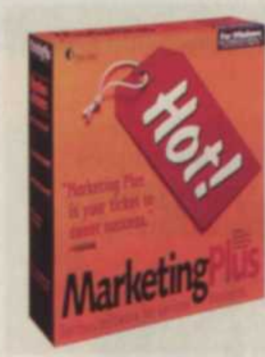

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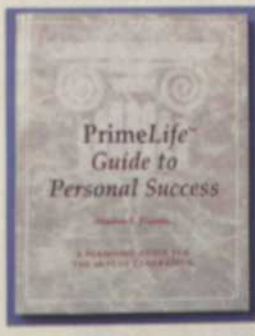

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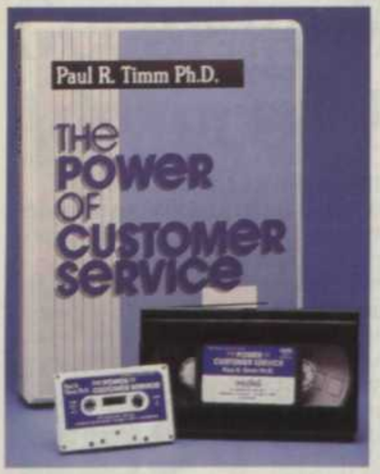

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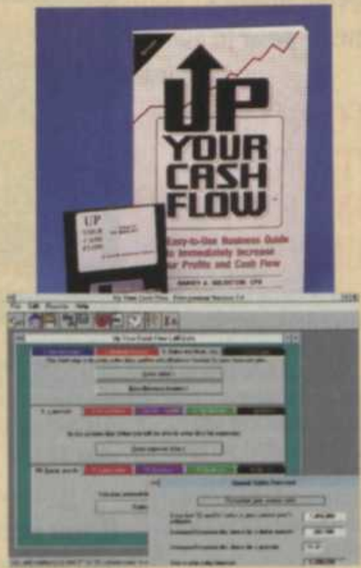

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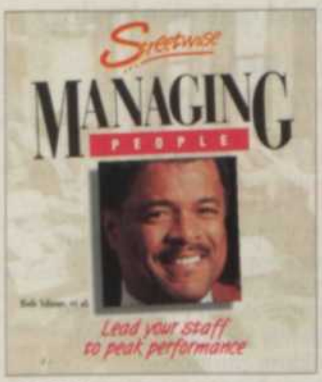

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Editorial

A Drive To Curb Litigation Abuses

A major change is under way in business' strategy for reforming the tort system. The success of this initiative would mean substantial benefits for companies and consumers alike.

The revised approach recognizes the extent to which workplace issues have become the basis of lawsuits against companies, and the reform effort will be geared to that reality.

Historically, reform of the tort system—through which individuals claim redress for alleged harm—has been considered largely a product-liability issue. In recent years, however, there has been a significant increase in lawsuits seeking financial compensation for alleged racial, age, and gender discrimination and allegedly unjust firings.

This trend is providing a bonanza to trial lawyers already benefiting handsomely from product-liability cases, and the political influence of these lawyers, based on heavy campaign contributions, remains the principal obstacle to reform.

The success of the trial lawyers' lobby in thwarting reform was spotlighted in the 1996 presidential-election campaign, when President Clinton vetoed a bipartisan product-liability-reform bill that had been passed by both houses of Congress over the opposition of the lawyers' group. Clinton has been a beneficiary of campaign contributions from the same lawyers, as have other elected officials—state as well as federal—who also oppose reform.

As the lawyers' clout grew via campaign cash, their potential client base also grew as Congress and state legislatures passed yet more laws increasing business's exposure to lawsuits. These laws put virtually every employer at risk of being sued, compared with the much smaller number that might face product-liability actions.

In view of the lawyers' political strength and the vastly increased potential not only for suits against business but also for excessive punitive-damages awards, the U.S. Chamber of Commerce is taking the lead in the reform campaign and basing the effort on a more extensive and aggressive approach than that pursued in trying to change the product-liability system.

Reforms to be pursued include a requirement that the losing party pay attorneys' fees for the prevailing party, particularly in employment-related cases; that elected judges not hear cases where they have received campaign contributions from one of the parties; limits on contingency fees, which encourage dubious claims for damages by requiring plaintiffs to pay their lawyers only if they win; and limits on punitive damages, which are added—often in stratospheric amounts—to awards covering plaintiffs' actual economic losses.

In addition to workplace issues, the initiative will cover citizens' suits on environmental grounds and class-action litigation.

The Chamber is particularly qualified to lead this broad effort to curb the litigation explosion. The organization has long been in the forefront of efforts to reform the tort-law system.

The Chamber's public-policy legal affiliate, the National Chamber Litigation Center, has been fighting the business battle in the courts for two decades. This pioneering operation to represent the enterprise system was established at a time when most of the litigation organizations that intervened in legal matters involving companies were liberal, even radical, in their opposition to business.

To counter the trial lawyers' opposition, the Chamber says, "the business community must be willing to devote significant resources to reform efforts if we are to have any hope of even slowing the growth of litigation."

In this early phase of the initiative, business people should become aware of the nature and dimensions of the threat and share that information within their own communities. This month's cover article is a good starting point.

As the Chamber points out, "the American people must be made aware of the terrible costs they are paying because of the explosion in litigation. Then, maybe, we will be able to generate sufficient support for real reform efforts." NB

When Former Employees Sue

Median awards for compensatory damages in cases involving claims of wrongful termination or constructive discharge.*

1990	$115,168
1991	152,104
1992	120,736
1993	150,000
1994	150,000
1995	149,385
1996	205,794

*A constructive-discharge claim alleges employer actions designed to force a resignation. Most awards covered emotional distress and/or financial loss.

SOURCE: JURY VERDICT RESEARCH—HORSHAM, PA.

CHART: GEORGIA LEIGH MCDONALD

Technically Speaking, The Visa Business Card Is Like A Mainframe Linked To 14 Million Terminals.

Understanding Karen's system for software testing can be mind-boggling. On the other hand, the system she uses to troubleshoot her own business is really quite simple—the Visa® Business card. It's accepted at over 14 million places worldwide, millions more than American Express. So Karen stays plugged in whether she's on the road testing for quality assurance or lecturing about it. To see what the Visa Business card can do for your business, call 1-800-VISA-311 ext. 91, or visit our Small Business Suite at www.visa.com/smallbiz/

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SUPPLEMENT TO Nation's Business FEBRUARY 1998

Published By
U.S. Chamber of Commerce

Lobbyists Set For Action

PHOTO: LAURENCE L. LEVIN

U.S. Chamber President and CEO Thomas J. Donohue, second from right in the front row, has expanded the organization's lobbying team to include, from left to right seated, Cecelia Adams, Lonnie Taylor, and Joe Theissen and, from left to right standing, J.T. Taylor, Doug Loon, Bill Morley, Randy Johnson, Tina Tabb, Ed Kaleta, and Brian Wild.

The U.S. Chamber of Commerce has expanded its lobbying team and is working to strengthen its clout on Capitol Hill this year.

Five new lobbyists have joined the Chamber's Office of Congressional and Public Affairs, which is headed by Senior Vice President Lonnie Taylor and includes Director Doug Loon and Managers Ed Kaleta, Tina Tabb, and Brian Wild.

Taylor, who has been the Chamber's chief lobbyist for the past 4 1/2 years, recently was promoted from vice president. Before coming

Continued On Page 16A

Colin Powell To Speak At Annual Meeting, Page 2A

'97 Congressional Scorecard, Page 3A

■ Global Warming

Chamber Fights Climate Treaty

The U.S. Chamber of Commerce and pro-business members of Congress have begun working to block U.S. ratification of the United Nations treaty on global warming, which they and others say could badly hurt the U.S. economy.

International delegates agreed to the so-called Kyoto Protocol on global warming Dec. 11 after a week of contentious negotiations in Japan. The Clinton administration supports the pact.

Proponents contend that the treaty would help reduce emissions of "greenhouse" gases, notably carbon dioxide. Some scientists blame these emissions for rising global temperatures. The Chamber and other business groups as well as labor and farm organizations say the treaty represents "unilateral economic disarmament" by the United States. Moreover, they say, the pact is unlikely to have its intended effect, which is to reduce greenhouse gas emissions.

Although the treaty would mandate that the major industrialized countries dramatically reduce energy use, developing countries that are also major producers of greenhouse gases, notably China and India, would be exempt.

"If the U.S. negotiators are looking for a way to mess up the world's most productive and prosperous economy, this agreement will do it," says Thomas J. Donohue, president and CEO of the Chamber. "This agreement is bad for the American economy, American workers, and American families."

Rep. John D. Dingell, D-Mich., told business leaders at a recent Policy Insiders meeting at the U.S. Chamber that he would lead the fight against a U.N. treaty on global climate change that could severely hurt the U.S. economy.

Donohue is urging Congress to reject the treaty, which he calls "economic suicide." For the treaty to be implemented by the United States, the Senate must approve it by a two-thirds majority and a majority of the House must approve specific implementation provisions.

Bruce Josten, the Chamber's executive vice president for government affairs, was among a group of influential U.S. business and industry leaders who traveled to Kyoto in December in an effort to prevent the treaty from evolving into a one-sided, unworkable mandate.

In a speech before international business and economic leaders in Kyoto, Josten warned that any government-mandated approach to reducing emissions would "require steep taxation or energy rationing [and would] seriously weaken the U.S. economy and destroy U.S. jobs."

On behalf of the Chamber and American businesses, Josten signed a joint statement on "voluntary business initiatives for mitigating climate change," which urged conference delegates to promote voluntary measures to curb pollution and greenhouse gases.

■ Focus On Work Force

Annual Meeting Slated

Colin Powell, former chairman of the Joint Chiefs of Staff, will be the keynote speaker for the 1998 annual meeting of the U.S. Chamber of Commerce on Feb. 23.

The event, which will focus on workforce preparation and will take place at the Chamber's headquarters in Washington, will be broadcast by satellite from 12:40 to 4 p.m. Eastern time to locations nationwide.

Powell is chairman of America's Promise, The Alliance For Youth, a group based in Alexandria, Va. He will discuss helping the nation's young people prepare for tomorrow's jobs.

The annual meeting also will feature several of the nation's governors and leaders from state and local chambers who have been involved in work-force education and training issues.

President Clinton has been invited to address the meeting.

Another major aspect of the program will be the recognition of the 1998 national honorees in the Blue Chip Enterprise Initiative.

The Blue Chip program honors small businesses that have overcome adversity and emerged stronger. It is sponsored by Massachusetts Mutual Life Insurance Co., known as MassMutual—The Blue Chip Company; the U.S. Chamber; *Nation's Business* magazine; and "First Business," the Chamber's weekday morning television news show. For more information, call (202) 463-5604.

■ Seminar

Doing Business On The Internet

A free seminar on using the Internet to make money and grow your business—sponsored by IBM Corp. and produced by the U.S. Chamber of Commerce—will be held April 8.

The program will be broadcast via satellite from 1 to 3 p.m. Eastern time at downlink sites throughout the country.

The seminar will feature Kendra Bonnett, an Internet expert and author of an IBM book, *Doing Business on the Internet.*

For more information about the seminar, or to find the downlink site nearest you, call the Chamber at 1-800-835-4730 or (202) 463-5940.

1997 How They Voted

First Session 105th Congress

The U.S. Chamber of Commerce publishes "How They Voted" after each session of Congress. In this publication, the Chamber evaluates the support or opposition of each U.S. senator and representative on selected issues of interest to Chamber members.

During the 1997 session of the 105th Congress, 10 key Senate votes and 10 key House votes were chosen as a fair representation of floor votes on issues important to the business community.

For a vote to be included in "How They Voted," it must meet three criteria. First, the vote must be a recorded floor vote. Second, the Chamber's board of directors must have a clear policy on the issue. And third, the Chamber must have communicated its position on the issue to Congress.

Each Senate and House vote used in the ratings is described separately and identified by a number on the following pages, beginning with the Senate votes.

The numbers on the vote descriptions correspond to the numbers at the top of the columns of tabular information. The "Key To Symbols," on Page 4A, explains how to interpret the vote tables.

For more information, call the Chamber's Office of Congressional and Public Affairs at (202) 463-5600.

PHOTO: LAURENCE L. LEVIN

U.S. Chamber President and CEO Thomas J. Donohue, right, discusses his plans for the Chamber with Senate Majority Leader Trent Lott, R-Miss.

State	1	2	3	4	5	6	7	8	9	10	'97 %	CUM %
ALABAMA												
SESSIONS (R)	+	+	+	+	+	-	-	-	+	+	70	70
SHELBY (R)	+	+	+	+	+	+	+	+	+	-	90	66
ALASKA												
MURKOWSKI (R)	+	+	+	+	+	+	+	+	+	+	100	84
STEVENS (R)	+	+	+	+	+	-	+	+	+	-	80	71
ARIZONA												
KYL (R)	+	+	+	-	+	-	-	+	+	+	70	91
McCAIN (R)	+	+	+	+	+	+	+	+	+	+	100	86
ARKANSAS												
BUMPERS (D)	-	-	-	-	-	+	+	+	-	+	40	31
HUTCHINSON (R)	+	+	+	+	+	-	-	+	+	+	80	89
CALIFORNIA												
BOXER (D)	-	-	-	+	-	+	+	+	+	-	50	23
FEINSTEIN (D)	-	-	-	+	-	+	+	+	+	-	50	33
COLORADO												
ALLARD (R)	+	+	+	-	+	+	+	-	+	+	80	90
CAMPBELL (R)	+	-	+	+	-	+	-	+	+	-	60	56
CONNECTICUT												
DODD (D)	-	-	-	+	-	-	+	+	+	+	50	28
LIEBERMAN (D)	-	-	-	+	-	+	+	+	+	+	60	39
DELAWARE												
BIDEN (D)	+	-	-	+	-	+	+	+	+	+	70	31
ROTH (R)	+	+	+	+	+	+	+	+	+	+	100	80
FLORIDA												
GRAHAM (D)	+	+	-	+	-	+	+	+	+	+	80	38
MACK (R)	+	+	+	+	+	-	-	+	+	+	80	92
GEORGIA												
CLELAND (D)	+	+	-	+	-	+	+	+	+	+	80	80
COVERDELL (R)	+	+	+	+	+	-	+	+	+	+	90	94
HAWAII												
AKAKA (D)	-	-	-	+	-	+	+	+	+	+	60	28
INOUYE (D)	-	-	-	+	-	-	+	+	+	+	50	27

SENATE VOTES

1. Balanced-Budget Amendment (S.J.Res. 1)

The Senate failed 66-34 to pass a joint resolution calling for a balanced-budget amendment to the Constitution. The amendment would have required Congress to approve yearly budgets in which spending was no greater than expected revenues.

A resolution for a constitutional amendment requires approval by two-thirds of the members voting in the House and the Senate. Once Congress approves amendments to the Constitution, 38 of the 50 states must also ratify them.

Under the measure, Congress would have been allowed to waive the amendment and approve deficit spending by a three-fifths vote of each house. Such a vote also would have been required to raise the federal debt limit.

To raise taxes under the amendment, a constitutional majority—51 votes in the Senate and 218 in the House—would have been required.

The U.S. Chamber supported the balanced-budget amendment as a way to restore fiscal discipline, to limit the cost of government, and to encourage savings, investment, and economic growth.

2. Nuclear-Waste Storage (S. 104)

The Senate approved 65-34 the Nuclear Waste Policy Act to establish an interim storage facility in the Nevada desert for used fuel from nuclear power plants. The bill provides for the development of an integrated nuclear-waste management system and a transportation network to move spent nuclear fuel rods to the storage site.

The House passed a nearly identical measure; a House-Senate compromise bill is expected to be approved in 1998.

The Chamber supported the legislation, which is particularly important to businesses because they are among the largest users of electricity. Virtually all electric utilities sell electricity generated at nuclear power plants. Those plants—81 in 34 states—are rapidly running out of storage space for used fuel rods.

Failure to designate a central storage site, said the Chamber, could jeopardize nuclear safety and would force plants that reach storage capacity to shut down.

3. Comp Time (S. 4)

The Senate failed 53-47 to stop a prolonged debate, or filibuster, on the Family Friendly Workplace Act, which would allow

KEY TO SYMBOLS

+ "Right" vote, supporting the U.S. Chamber's position.
- "Wrong" vote, contrary to the U.S. Chamber's position.
? No recorded vote.
P Voted "present."
O Seat vacant on date of vote.

'97% Percentage of correct votes out of total votes cast by that member on Chamber-selected issues during 1997, the first session of the 105th Congress.

CUM% Average annual percentage of correct votes cast by that member on Chamber-selected issues since the Chamber began rating members in 1965, or since that member's first year in Congress, through 1997.

Note: The percentage calculations were made using only "+" and "-" votes. The "?," "P," and "O" votes were not included in the calculations.

State	1	2	3	4	5	6	7	8	9	10	'97 %	CUM %
IDAHO												
CRAIG (R)	+	+	+	+	+	+	+	+	+	+	100	93
KEMPTHORNE (R)	+	+	+	+	+	+	+	+	+	+	100	94
ILLINOIS												
DURBIN (D)	-	-	-	+	-	-	+	+	+	-	40	27
MOSELEY-BRAUN (D)	+	+	-	+	-	+	+	+	+	-	70	44
INDIANA												
COATS (R)	+	-	+	-	+	-	-	-	+	+	50	86
LUGAR (R)	+	+	+	+	+	-	+	+	+	+	90	88
IOWA												
GRASSLEY (R)	+	+	+	+	+	+	+	+	+	+	100	81
HARKIN (D)	+	+	-	+	-	+	+	+	+	-	70	33
KANSAS												
BROWNBACK (R)	+	+	+	+	+	+	+	+	+	+	100	98
ROBERTS (R)	+	+	+	+	+	-	+	+	+	+	90	91
KENTUCKY												
FORD (D)	-	-	-	+	-	-	+	-	+	-	30	37
McCONNELL (R)	+	+	+	+	+	+	+	+	+	+	100	90
LOUISIANA												
BREAUX (D)	+	-	-	+	-	+	+	+	+	+	70	60
LANDRIEU (D)	+	-	-	+	-	+	+	+	+	+	70	70
MAINE												
COLLINS (R)	+	+	+	+	+	-	-	+	+	+	80	80
SNOWE (R)	+	+	+	+	+	-	-	+	+	-	70	67
MARYLAND												
MIKULSKI (D)	-	-	-	+	-	?	+	+	+	-	44	26
SARBANES (D)	-	-	-	-	-	+	+	+	-	-	30	20

employers to offer workers time off from their jobs in lieu of overtime pay. (It takes a three-fifths majority—60 votes—to limit debate in the Senate.)

The measure would amend the Fair Labor Standards Act of 1938 to allow employers to give their hourly employees the option of taking compensatory time for hours worked over 40 in a week.

Workers would accrue comp-time leave at the rate of 1.5 hours for each hour of overtime worked. The bill also would create a two-week, 80-hour work period.

The House passed a similar bill in 1997.

The Chamber supported the legislation as a way to provide flexible work schedules to private-sector employees, especially those trying to raise children in single-parent or two-worker families. Public-sector employees, the Chamber pointed out, have had the comp-time option since 1985. (See second comp-time vote, Page 6A.)

4. Fiscal 1998 Budget Resolution (H.Con.Res. 84)

The Senate passed 78-22 a concurrent resolution to adopt a five-year blueprint to balance the federal budget by 2002. The measure called for reducing spending by about $320 billion and cutting taxes by a net $85 billion from fiscal 1998 through 2002. Under the plan, a budget surplus of $1 billion would be achieved in fiscal 2002. The House approved a nearly identical concurrent resolution.

The resolution was approved after Republicans, Democrats, and the White House agreed to the broad outlines of a balanced-budget plan, which called for a $204 billion reduction in the federal deficit over five years.

The Senate blueprint contained savings of $115 billion on

Lonnie Taylor, left, the U.S. Chamber's senior vice president for congressional and public affairs, and Bruce Josten, center, the federation's executive vice president for government affairs, talk with House Speaker Newt Gingrich, R-Ga., about pro-business legislation pending in the House.

PHOTO: T. MICHAEL KEZA

U.S. Chamber President and CEO Thomas J. Donohue, right, and Senate Minority Leader Thomas A. Daschle, D-S.D., talk about issues important to business.

State	1	2	3	4	5	6	7	8	9	10	'97 %	CUM %
MASSACHUSETTS												
KENNEDY (D)	-	-	-	-	-	+	+	+	+	-	40	20
KERRY (D)	-	-	-	-	-	+	+	+	+	+	50	33
MICHIGAN												
ABRAHAM (R)	+	+	+	+	+	-	+	+	+	+	90	94
LEVIN (D)	-	+	-	+	-	+	-	+	+	-	50	25
MINNESOTA												
GRAMS (R)	+	+	+	-	+	+	+	-	+	+	80	91
WELLSTONE (D)	-	-	-	-	-	+	-	-	-	-	10	18
MISSISSIPPI												
COCHRAN (R)	+	+	+	+	+	-	+	+	+	+	90	85
LOTT (R)	+	+	+	+	+	-	+	+	+	+	90	88
MISSOURI												
ASHCROFT (R)	+	+	+	-	+	+	-	-	+	+	70	90
BOND (R)	+	+	+	+	+	+	+	+	+	+	100	91
MONTANA												
BAUCUS (D)	+	-	-	+	-	+	+	+	+	+	70	35
BURNS (R)	+	+	+	+	+	-	?	+	+	-	78	87
NEBRASKA												
HAGEL (R)	+	+	+	+	+	+	+	+	+	+	100	100
KERREY (D)	-	-	-	+	-	+	+	+	+	+	60	38
NEVADA												
BRYAN (D)	+	-	-	+	-	+	+	+	+	+	70	33
REID (D)	-	-	-	+	-	+	+	+	+	-	50	29
NEW HAMPSHIRE												
GREGG (R)	+	+	+	+	+	+	+	+	+	+	100	89
SMITH (R)	+	+	+	-	+	-	-	-	+	-	50	88
NEW JERSEY												
LAUTENBERG (D)	-	-	-	+	-	+	+	+	+	+	60	28
TORRICELLI (D)	-	-	-	+	-	+	-	+	+	-	40	26
NEW MEXICO												
BINGAMAN (D)	-	-	-	+	-	+	+	+	+	+	60	36
DOMENICI (R)	+	+	+	+	+	+	+	+	+	+	100	79

Medicare, nearly $14 billion on Medicaid, and about $140 billion on the 13 annual appropriations bills.

The Chamber supported the resolution as a means of achieving a balanced federal budget, lowering taxes, reducing spending, enhancing economic growth, and making the federal government less costly and less intrusive.

5. Comp Time (S. 4)

The Senate again failed, this time on a 51-47 vote, to stop a filibuster of the Family Friendly Workplace Act, which would permit employers and employees to enter into voluntary agreements allowing workers to take time off from their jobs in lieu of overtime pay. (It takes a three-fifths majority—60 votes—to limit debate in the Senate.)

The measure would amend the Fair Labor Standards Act of 1938 to allow employers to give their hourly employees the option of taking compensatory time instead of overtime pay for hours worked over 40 in a week.

Workers would accrue comp-time leave at the rate of 1.5 hours for each hour of overtime worked. The bill also would have created a two-week, 80-hour work period.

The House passed a similar bill in 1997.

The Chamber supported the legislation as a way to provide flexible work schedules to private-sector employees, especially those trying to raise children in single-parent or two-worker families. Public-sector employees, the Chamber pointed out, have had the comp-time option since 1985. (See previous comp-time vote, Page 4A.)

6. Restrictions On Computer Sales

The Senate adopted 72-27 an amendment to allow sales of some computers to certain countries without a special license.

The amendment to the fiscal 1998 Defense authorization bill in effect defeated an amendment that would have required companies to secure export licenses to sell computers with a speed greater than 2,000 MTOPS—millions of theoretical operations per second—to certain "Tier 3" countries, including China, India, Israel, Pakistan, and Russia.

Currently, computers with speeds from 2,000 to 7,000 MTOPS can be exported to Tier 3 countries under a general license unless the U.S. company knows or is informed that the computers will be used for military, nuclear, or weapons purposes.

The Chamber supported the provision that eliminated the restrictive amendment. It argued that placing restrictive export controls on certain computers would not restrict their availability to other countries but would place U.S. firms at a competitive disadvantage; computers could be purchased from European or Asian countries. That would cost U.S. firms sales and jobs, said the Chamber.

7. MFN Status For China

The Senate rejected 77-22 an amendment to the fiscal 1998 Foreign Operations appropriations bill expressing the sense of the Senate that the president's extension of most-favored-nation (MFN) trade status to China should be revoked.

The House defeated a measure to revoke extension of MFN status for China.

MFN status is routinely granted to most of the nations with which the United States trades. It confers no special trade privileges; it simply allows a foreign country's products to enter the United States at normal tariff rates.

The Chamber opposed the amendment and urged Senate lawmakers to support extension of MFN for China because

State	1	2	3	4	5	6	7	8	9	10	'97 %	CUM %
NEW YORK												
D'AMATO (R)	+	+	-	+	-	+	-	+	+	+	70	67
MOYNIHAN (D)	-	-	-	-	-	+	+	+	+	+	50	29
NORTH CAROLINA												
FAIRCLOTH (R)	+	+	+	-	+	+	-	-	+	-	60	81
HELMS (R)	+	+	+	-	+	+	-	-	+	+	70	89
NORTH DAKOTA												
CONRAD (D)	-	-	-	+	-	+	+	+	+	-	50	33
DORGAN (D)	-	-	-	+	-	+	+	+	+	-	50	33
OHIO												
DeWINE (R)	+	+	+	+	+	-	-	+	+	+	80	82
GLENN (D)	-	-	-	+	-	-	+	+	-	+	40	33
OKLAHOMA												
INHOFE (R)	+	+	+	-	+	-	-	-	+	-	50	87
NICKLES (R)	+	+	+	+	+	+	+	+	+	+	100	90
OREGON												
SMITH (R)	+	+	+	+	+	+	+	+	+	+	100	100
WYDEN (D)	-	+	-	+	-	+	+	+	+	+	70	33
PENNSYLVANIA												
SANTORUM (R)	+	+	+	+	+	+	+	+	+	-	90	87
SPECTER (R)	+	+	-	-	-	-	+	+	+	-	50	57
RHODE ISLAND												
CHAFEE (R)	+	+	+	+	+	+	+	+	+	+	100	62
REED (D)	-	-	-	-	?	+	+	+	+	-	44	29
SOUTH CAROLINA												
HOLLINGS (D)	-	+	-	-	-	+	-	-	-	-	20	45
THURMOND (R)	+	+	+	+	+	-	+	+	+	-	80	88
SOUTH DAKOTA												
DASCHLE (D)	-	-	-	+	-	+	+	+	+	+	60	38
JOHNSON (D)	-	+	-	+	-	+	+	+	+	+	70	44
TENNESSEE												
FRIST (R)	+	+	+	+	+	+	+	+	+	+	100	100
THOMPSON (R)	+	+	+	-	+	-	-	-	+	+	60	83
TEXAS												
GRAMM (R)	+	+	+	-	+	+	+	-	+	+	80	88
HUTCHISON (R)	+	+	+	+	+	+	+	+	+	+	100	98
UTAH												
BENNETT (R)	+	+	+	+	+	+	+	+	+	+	100	96
HATCH (R)	+	+	+	+	+	+	+	+	+	+	100	92
VERMONT												
JEFFORDS (R)	+	+	+	+	?	+	+	+	+	+	100	57
LEAHY (D)	-	+	-	+	-	+	-	+	+	+	60	28
VIRGINIA												
ROBB (D)	+	+	-	+	-	+	+	+	-	+	70	42
WARNER (R)	+	+	+	+	+	+	+	+	+	+	100	86
WASHINGTON												
GORTON (R)	+	+	+	+	+	+	+	+	+	+	100	79
MURRAY (D)	-	+	-	+	-	+	+	+	+	+	70	31
WEST VIRGINIA												
BYRD (D)	-	-	-	+	-	+	+	+	-	-	40	30
ROCKEFELLER (D)	-	?	-	+	-	+	+	+	+	+	67	33
WISCONSIN												
FEINGOLD (D)	-	-	-	+	-	-	-	+	-	-	20	21
KOHL (D)	+	+	-	+	-	+	+	+	+	+	80	42
WYOMING												
ENZI (R)	+	+	+	-	+	+	+	-	+	-	70	70
THOMAS (R)	+	+	+	-	+	+	+	+	+	+	90	95

denying the trade status would have virtually assured trade retaliation against U.S. exports to China, thereby costing U.S. jobs, and would have hurt efforts to achieve political and trade reforms in China.

8. Balanced-Budget Act (H.R. 2015)

The Senate passed 85-15 the House-Senate conference report for the fiscal 1998 budget-reconciliation bill to reduce the amount of spending on entitlements and other mandatory government programs by about $140 billion over five years.

The measure includes changes in the Medicare program, which had been projected to go bankrupt in 2001. Market-based reforms in the government health-care program for the elderly and long-term disabled are expected to save about $115 billion over five years.

The House passed an identical reconciliation bill, and the president signed it into law.

The Chamber supported the legislation as a way to help balance the budget and rein in runaway entitlement spending. The organization strongly endorsed provisions in the measure that expand the health-care options available to senior citizens beyond Medicare's fee-for-service plan and that allow up to 390,000 Medicare beneficiaries to establish tax-free medical savings accounts.

9. Tax-Relief Act (H.R. 2014)

The Senate approved 92-8 the House-Senate conference report for the Taxpayer Relief Act. The tax-cut bill calls for a net tax reduction of $100 billion over five years, from fiscal 1998 through 2002. The House passed the tax-cut package, and the president signed it into law.

The legislation repeals the alternative minimum tax for small-business corporations with average annual gross receipts of less than $5 million in 1995, 1996, and 1997 and those that will have less than $7.5 million in subsequent years.

The top capital-gains rate for individuals will be cut to 20 percent, from 28 percent, for capital assets held for at least 18

Sally Jefferson, the U.S. Chamber's manager of transportation policy, discusses highway issues with Sen. John W. Warner, R-Va., chairman of a Senate transportation subcommittee.

The U.S. Chamber's congressional and public affairs director, Douglas Loon, right, talks with Sen. Connie Mack, R-Fla. Mack is a member of the leadership team that sets the Senate agenda.

months after July 28, 1997. For capital assets purchased after 2000 and held for at least five years, the top rate will be 18 percent.

Among other things, the measure:

■ Increases the exemption for estate taxes from $600,000 to $1 million by 2006. A new exemption for certain "qualified family-owned business interests" is available beginning this year.

■ Allows employers to give workers up to $5,250 in tax-exempt education benefits a year. The legislation reinstates the employer-provided education-assistance exclusion retroactive to May 31, 1997, and extends it through May 31, 2000.

■ Reinstates the research-and-experimentation tax credit, which expired May 31, 1997, until June 30.

■ Expands the home-office deduction to include expenses related to administrative and managerial activities when no other fixed location exists to perform such activities.

■ Extends a waiver period for penalties on businesses that fail to comply with a requirement that they deposit federal payroll taxes electronically. The Internal Revenue Service waived the penalty through Dec. 31, 1997. The bill extends the waiver period through June 30.

■ Establishes a $400 tax credit for each child under age 17 for 1998 and a $500 credit thereafter.

■ Increases the tax deduction for health insurance for the self-employed to 100 percent by 2007. The self-employed can deduct 40 percent of their health insurance costs for 1997 through 1999, 50 percent for 2000 and 2001, 60 percent for 2002, 80 percent for 2003 through 2005, and 90 percent for 2006.

The Chamber supported the tax-cut bill because it will benefit families and businesses by encouraging economic growth, providing increased access to capital for new investments, and returning money to the pockets of American taxpayers.

10. Fast-Track Trade Authority

The Senate passed 69-31 a motion to end a filibuster, or prolonged debate, on legislation to grant the president fast-track trade-negotiating authority.

Fast-track would allow the president to negotiate with other countries on trade agreements that would be subject only to up-or-down votes of Congress. Such pacts, which must be considered within a specified period, could not be amended.

Fast-track authority expired three years ago, and since that time 22 international trade agreements have been negotiated without the United States. (Although the Senate cloture vote allowed the fast-track bill to proceed to a final vote, no such vote was taken. The House also failed to vote on a fast-track bill.)

The Chamber supported the legislation because most countries will not enter into trade talks with the United States unless they are certain that agreements will not be subject to amendments by Congress. Fast-track, said the Chamber, is crucial to American leadership in the world economy and is critical to economic growth and job creation in this country.

U.S. Chamber President and CEO Thomas J. Donohue, left, Secretary of State Madeleine K. Albright, and Treasury Secretary Robert E. Rubin prepare to address business representatives about the importance of fast-track trade-negotiating authority.

PHOTO: T. MICHAEL KEZA

U.S. Chamber President and CEO Thomas J. Donohue testifies before the House Ways and Means Committee on the importance of passing fast-track trade-negotiating authority.

State	1	2	3	4	5	6	7	8	9	10	'97 %	CUM %
ALABAMA												
1 CALLAHAN (R)	+	-	+	+	+	+	+	+	+	+	90	91
2 EVERETT (R)	+	-	+	-	+	+	+	+	+	+	80	88
3 RILEY (R)	+	-	+	-	+	+	+	+	+	?	78	78
4 ADERHOLT (R)	+	-	+	-	+	+	+	+	+	+	80	80
5 CRAMER (D)	-	+	+	+	+	+	-	+	+	+	80	54
6 BACHUS (R)	-	+	+	+	+	+	+	+	+	+	90	93
7 HILLIARD (D)	-	+	-	-	-	-	?	+	+	+	44	26
ALASKA												
YOUNG (R)	-	+	+	+	+	+	-	+	+	+	80	70
ARIZONA												
1 SALMON (R)	+	-	-	+	-	+	+	+	+	+	70	85
2 PASTOR (D)	-	+	+	+	-	-	-	-	+	+	50	32
3 STUMP (R)	+	-	+	+	+	+	+	+	+	+	90	89
4 SHADEGG (R)	+	-	-	+	+	+	+	+	+	+	80	89
5 KOLBE (R)	+	+	+	+	+	+	+	+	+	+	100	96
6 HAYWORTH (R)	+	-	+	+	+	+	+	+	+	+	90	95
ARKANSAS												
1 BERRY (D)	-	+	+	+	-	-	-	+	+	+	60	60
2 SNYDER (D)	-	+	+	+	+	-	-	-	+	+	60	60
3 HUTCHINSON (R)	+	-	+	+	+	+	+	+	+	+	90	90
4 DICKEY (R)	+	-	+	-	+	+	+	+	+	+	80	89
CALIFORNIA												
1 RIGGS (R)	+	+	+	+	+	+	+	+	+	+	100	92
2 HERGER (R)	+	+	+	+	+	+	+	+	-	+	90	92
3 FAZIO (D)	-	+	+	+	-	-	-	+	+	+	60	33
4 DOOLITTLE (R)	+	-	+	-	+	+	+	+	+	+	80	86
5 MATSUI (D)	-	+	+	+	-	-	-	-	+	-	40	27
6 WOOLSEY (D)	-	+	+	-	-	-	-	-	-	+	30	20
7 MILLER (D)	-	?	-	-	-	-	-	-	-	+	11	22
8 PELOSI (D)	-	+	-	-	-	-	-	-	-	+	20	19
9 DELLUMS (D)	-	+	-	-	-	-	-	-	-	+	20	15
10 TAUSCHER (D)	-	+	+	+	+	-	-	-	-	+	50	50
11 POMBO (R)	+	-	-	-	+	+	+	+	-	+	60	86
12 LANTOS (D)	-	+	+	-	-	-	-	?	-	+	33	26
13 STARK (D)	-	+	-	-	-	-	-	-	-	-	10	32
14 ESHOO (D)	-	+	+	+	-	-	-	-	-	+	40	18
15 CAMPBELL (R)	+	-	+	+	+	-	+	+	+	+	80	81
16 LOFGREN (D)	-	+	+	+	-	-	-	-	-	+	40	31
17 FARR (D)	-	+	+	+	-	-	-	-	-	+	40	33
18 CONDIT (D)	-	+	+	-	+	+	-	+	-	+	60	61
19 RADANOVICH (R)	+	-	+	+	+	+	+	+	-	+	80	91
20 DOOLEY (D)	+	+	+	+	+	+	-	+	+	+	90	67
21 THOMAS (R)	+	+	+	+	+	+	+	+	+	+	100	94
22 CAPPS (D)	-	+	+	+	+	-	-	-	0	0	50	50
23 GALLEGLY (R)	+	+	+	+	+	+	+	+	+	+	100	93
24 SHERMAN (D)	-	+	+	+	-	+	-	-	-	+	50	50
25 McKEON (R)	+	+	+	+	+	+	+	+	-	+	90	98

HOUSE VOTES

1. Comp Time (H.R. 1)

The House passed 222-210 the Working Families Flexibility Act, which would allow employers to offer workers time off from their jobs in lieu of overtime pay.

The measure would amend the Fair Labor Standards Act of 1938 to allow employers to give their hourly employees the option of taking compensatory time for hours worked over 40 in a week. Workers would accrue comp-time leave at the rate of 1.5 hours for each hour of overtime worked.

The Senate twice failed to cut off a filibuster of a similar comp-time bill. Legislation may be considered by the Senate in 1998.

The Chamber supported the legislation as a way to provide flexible work schedules to private-sector employees, especially those trying to raise children in single-parent or two-worker families.

Public-sector employees, the Chamber pointed out, have had the comp-time option since 1985.

2. Job-Training Consolidation (H.R. 1385)

The House approved 343-60 the Employment, Training, and Literacy Act. The legislation would consolidate 60 federal employment, job-training, and adult-literacy programs into three block grants to the states.

The Senate did not vote on similar legislation in 1997 but is expected to consider it during its 1998 session.

The Chamber supported the measure because it would better target job-training efforts at the state and local levels, make more-efficient use of federal funds, lower costs, and provide more-effective training.

The business federation was particularly enthusiastic about a section of the bill that would allow local chambers and other business entities to serve as "full-service eligible providers" for job-training assistance. Many of the Chamber's 3,000 state and local chamber members are involved in work-force development efforts.

3. Fiscal 1998 Budget Resolution (H.Con.Res. 84)

The House passed 333-99 a concurrent resolution to adopt a five-year blueprint to balance the federal budget by 2002. The measure called for reducing spending by about $280 billion and cutting taxes by $85 billion in fiscal 1998 through 2002.

Under the plan, a budget surplus of $1 billion would be achieved in fiscal 2002.

The Senate approved a nearly identical concurrent resolution. (See the Senate vote, Page 5A.)

The resolution was approved after Republicans, Democrats, and the White House agreed to the broad outlines of a balanced-budget plan, which called for a $204 billion reduction in the federal deficit over five years.

The House-approved budget blueprint contained savings of $115 billion from Medicare, nearly $14 billion from Medicaid, and about $140 billion from the 13 annual appropriations measures.

The Chamber supported the resolution as a means of achieving a balanced federal budget, lowering taxes, reducing spending, enhancing economic growth, and making the federal government less costly and less intrusive.

PHOTO: T. MICHAEL KEZA

Ed Kaleta, right, manager of the U.S. Chamber's Office of Congressional and Public Affairs, talks with Spirit of Enterprise Award winner Rep. Henry Bonilla, R-Texas, about ergonomics legislation.

State	1	2	3	4	5	6	7	8	9	10	'97 %	CUM %
26 BERMAN (D)	-	+	+	-	-	-	?	-	-	+	33	25
27 ROGAN (R)	+	-	+	-	+	+	+	+	+	+	80	80
28 DREIER (R)	+	+	+	+	+	+	+	+	+	+	100	93
29 WAXMAN (D)	-	+	-	-	-	-	-	-	-	+	20	21
30 BECERRA (D)	-	+	-	+	-	-	-	-	-	+	30	24
31 MARTINEZ (D)	-	+	+	+	+	-	-	+	-	+	60	29
32 DIXON (D)	-	+	-	+	-	-	-	-	-	+	30	25
33 ROYBAL-ALLARD (D)	-	+	-	+	-	-	-	-	-	+	30	24
34 TORRES (D)	-	+	+	-	-	-	-	-	-	+	30	24
35 WATERS (D)	-	+	-	-	-	-	-	-	-	+	20	14
36 HARMAN (D)	+	+	+	+	+	+	-	+	-	+	80	60
37 MILLENDER-McDONALD (D)	-	+	-	+	-	-	-	-	-	+	30	25
38 HORN (R)	-	+	+	-	+	+	-	-	+	+	60	82
39 ROYCE (R)	+	-	+	-	+	+	+	+	+	+	80	88
40 LEWIS (R)	+	+	+	+	+	+	-	+	-	+	80	82
41 KIM (R)	+	+	+	+	+	+	+	+	+	+	100	100
42 BROWN (D)	-	+	-	+	-	-	-	-	-	+	30	23
43 CALVERT (R)	+	+	+	+	+	+	+	+	+	+	100	100
44 BONO (R)	+	+	+	-	+	+	+	+	+	+	90	95
45 ROHRABACHER (R)	+	+	-	-	+	+	+	+	+	+	80	87
46 SANCHEZ (D)	-	+	+	-	+	+	-	+	-	+	60	60
47 COX (R)	+	-	-	?	?	+	+	+	+	+	75	86
48 PACKARD (R)	+	?	+	+	+	+	+	+	+	+	100	92
49 BILBRAY (R)	+	+	+	+	+	+	-	-	+	+	80	90
50 FILNER (D)	-	+	-	+	-	-	-	-	-	+	30	27
51 CUNNINGHAM (R)	+	+	+	+	+	+	+	+	+	+	100	92
52 HUNTER (R)	+	+	-	-	+	+	+	+	+	+	80	86
COLORADO												
1 DEGETTE (D)	-	?	-	+	-	-	-	-	-	+	22	22
2 SKAGGS (D)	-	+	+	+	-	-	-	-	-	+	40	35
3 McINNIS (R)	+	+	+	-	+	+	+	+	+	+	90	90
4 SCHAFFER (R)	+	+	+	-	+	+	+	+	+	+	90	90
5 HEFLEY (R)	+	-	+	-	+	+	+	+	+	+	80	90
6 SCHAEFER (R)	+	-	+	+	+	+	+	+	+	+	90	86
CONNECTICUT												
1 KENNELLY (D)	-	+	+	+	+	-	-	-	+	+	60	30
2 GEJDENSON (D)	-	+	+	-	-	-	-	-	+	+	40	25
3 DeLAURO (D)	-	+	+	-	-	-	-	-	-	+	30	23
4 SHAYS (R)	+	+	+	+	+	+	-	-	-	+	70	64
5 MALONEY (D)	-	+	+	-	+	+	-	-	+	+	60	60
6 JOHNSON (R)	+	+	+	+	+	+	-	-	+	+	80	71
DELAWARE												
CASTLE (R)	+	+	+	+	+	+	+	-	+	+	90	92
FLORIDA												
1 SCARBOROUGH (R)	+	-	-	-	+	+	+	+	+	+	70	84
2 BOYD (D)	+	+	+	+	+	-	-	+	+	+	80	80

4. MFN Status For China (H.J.Res. 79)

The House rejected 259-173 a joint resolution that would have revoked the president's extension of most-favored-nation (MFN) trade status to China.

The Senate rejected a measure to express the sense of the Senate that China's MFN status should be disallowed.

MFN status is routinely granted to most of the nations with which the United States trades. It confers no special trade privileges; it simply allows a foreign country's products to enter the United States at normal tariff rates.

The Chamber opposed the joint resolution revoking MFN for China because such a move would have virtually assured trade retaliation against U.S. exports to China, thereby costing U.S. jobs, and would have hurt efforts to achieve political and trade reforms in China.

5. Balanced-Budget Act (H.R. 2015)

The House passed 270-162 the fiscal 1998 budget-reconciliation bill to reduce the amount of spending on entitlements and other mandatory government programs by about $137 billion over five years.

The measure included changes in the Medicare program, which had been projected to go bankrupt in 2001. Market-based reforms in the government health-care program for the elderly and long-term disabled would save about $115 billion over five years.

The Senate passed a slightly different reconciliation bill, and the president signed into law a House-Senate compromise measure.

The Chamber supported the legislation as a way to help balance the budget and rein in runaway entitlement spending. The organization strongly endorsed provisions in the measure that expand the health-care options available to senior citizens beyond Medicare's fee-for-service plan and that allow up to 500,000 Medicare beneficiaries to establish tax-free medical-savings accounts.

PHOTO: T. MICHAEL KEZA

Willard A. Workman, left, the U.S. Chamber's vice president/international, talks about trade developments with Argentine President Carlos Menem at an International Forum meeting at the Chamber.

1997 HOW THEY VOTED

State	1	2	3	4	5	6	7	8	9	10	'97 %	CUM %
3 BROWN (D)	-	+	-	+	-	-	?	-	+	+	44	32
4 FOWLER (R)	+	+	+	-	+	+	+	+	+	+	90	91
5 THURMAN (D)	-	+	+	+	+	-	-	-	+	+	60	42
6 STEARNS (R)	+	-	+	-	-	+	+	+	+	+	70	79
7 MICA (R)	+	+	+	+	+	+	+	+	+	+	100	93
8 McCOLLUM (R)	+	+	-	+	+	+	+	+	+	+	90	90
9 BILIRAKIS (R)	+	+	+	+	+	+	+	+	+	+	100	84
10 YOUNG (R)	+	?	+	+	+	+	+	+	+	+	100	81
11 DAVIS (D)	-	+	+	+	+	-	-	-	+	+	60	60
12 CANADY (R)	+	+	+	+	+	+	+	+	+	+	100	94
13 MILLER (R)	+	+	+	+	+	+	+	+	+	+	100	95
14 GOSS (R)	+	-	+	+	+	+	+	-	+	+	80	87
15 WELDON (R)	+	-	-	-	+	+	+	+	?	+	67	89
16 FOLEY (R)	+	+	+	+	+	+	+	+	+	+	100	97
17 MEEK (D)	-	+	-	+	-	-	-	-	+	+	40	31
18 ROS-LEHTINEN (R)	+	+	+	-	+	+	+	+	+	+	90	74
19 WEXLER (D)	-	+	+	-	-	-	-	-	+	+	40	40
20 DEUTSCH (D)	-	+	+	+	-	-	-	+	+	+	60	50
21 DIAZ-BALART (R)	-	+	+	-	+	+	-	+	+	+	70	73
22 SHAW (R)	+	+	+	+	+	+	+	+	+	+	100	87
23 HASTINGS (D)	-	+	-	-	-	-	-	-	-	+	20	20
GEORGIA												
1 KINGSTON (R)	+	-	+	-	+	+	+	+	+	+	80	88
2 BISHOP (D)	-	+	+	-	+	-	-	+	+	+	60	45
3 COLLINS (R)	+	-	+	-	+	+	+	+	+	+	80	86
4 McKINNEY (D)	-	+	+	-	-	-	-	-	-	+	30	20
5 LEWIS (D)	-	+	-	-	-	-	-	-	-	+	20	17
6 GINGRICH (R)	+	0	+	+	+	+	0	+	+	+	100	90
7 BARR (R)	+	-	+	-	+	+	+	+	+	+	80	90
8 CHAMBLISS (R)	+	+	+	-	+	+	?	?	+	+	88	96
9 DEAL (R)	+	+	+	-	+	+	+	+	+	+	90	87
10 NORWOOD (R)	+	+	+	-	+	+	+	+	+	+	90	97
11 LINDER (R)	+	+	+	+	+	+	+	+	+	+	100	98
HAWAII												
1 ABERCROMBIE (D)	-	+	+	-	-	-	-	-	-	+	30	16
2 MINK (D)	-	+	-	-	-	-	-	-	-	+	20	14
IDAHO												
1 CHENOWETH (R)	+	-	-	-	+	+	+	+	+	+	70	83
2 CRAPO (R)	+	-	-	-	+	+	+	+	+	+	70	89
ILLINOIS												
1 RUSH (D)	-	+	-	+	-	-	-	-	+	+	40	25
2 JACKSON (D)	-	+	-	-	-	-	-	-	-	+	20	20
3 LIPINSKI (D)	-	+	-	-	-	+	-	-	+	+	40	35
4 GUTIERREZ (D)	-	?	-	-	-	-	?	-	-	+	13	18
5 BLAGOJEVICH (D)	-	+	+	+	-	-	-	-	-	+	40	40
6 HYDE (R)	+	-	-	-	+	+	+	+	+	+	70	86
7 DAVIS (D)	-	-	-	-	-	-	-	-	-	+	10	10
8 CRANE (R)	+	-	-	+	+	+	+	+	+	+	80	88
9 YATES (D)	-	+	?	?	?	?	-	-	-	+	33	18
10 PORTER (R)	+	+	+	+	+	+	+	-	+	+	90	85
11 WELLER (R)	-	+	+	+	+	+	-	+	+	+	80	89
12 COSTELLO (D)	-	+	+	-	-	-	-	-	+	+	40	30
13 FAWELL (R)	+	+	+	+	+	+	+	-	+	+	90	94
14 HASTERT (R)	+	+	+	+	+	+	+	+	+	+	100	92
15 EWING (R)	+	+	+	+	+	+	-	-	+	+	80	92
16 MANZULLO (R)	+	-	+	+	+	+	+	+	+	+	90	93
17 EVANS (D)	-	+	-	-	-	-	-	-	-	+	20	17
18 LaHOOD (R)	+	-	+	+	+	+	-	+	+	+	80	85
19 POSHARD (D)	-	+	+	+	-	-	-	-	+	+	50	41
20 SHIMKUS (R)	-	+	+	+	+	+	-	+	+	+	80	80
INDIANA												
1 VISCLOSKY (D)	-	+	+	-	+	-	-	-	+	+	50	30
2 McINTOSH (R)	+	+	-	+	-	+	+	?	-	+	67	89
3 ROEMER (D)	-	+	+	+	+	+	-	+	-	+	70	61
4 SOUDER (R)	+	+	+	-	+	+	+	+	-	+	80	82
5 BUYER (R)	+	+	+	+	+	+	+	+	+	+	100	99
6 BURTON (R)	+	-	+	-	+	+	+	+	+	+	80	87
7 PEASE (R)	+	+	+	+	+	+	+	+	-	+	90	90
8 HOSTETTLER (R)	+	-	+	-	+	+	+	+	+	+	80	84
9 HAMILTON (D)	-	+	+	+	+	-	-	+	-	+	60	47
10 CARSON (D)	-	+	+	-	-	-	-	-	-	+	30	30
IOWA												
1 LEACH (R)	+	+	+	+	+	+	+	+	+	+	100	73
2 NUSSLE (R)	+	+	+	+	+	+	+	+	+	+	100	95
3 BOSWELL (D)	-	+	+	+	+	+	-	+	-	+	70	70
4 GANSKE (R)	+	+	-	-	+	+	+	-	+	+	70	88
5 LATHAM (R)	+	+	+	+	+	+	+	+	+	+	100	99

PHOTO: T. MICHAEL KEZA

Lonnie Taylor, right, the U.S. Chamber's senior vice president for congressional and public affairs, details the business federation's legislative priorities to freshman Rep. Kenny C. Hulshof, R-Mo.

State	1	2	3	4	5	6	7	8	9	10	'97 %	CUM %
KANSAS												
1 MORAN (R)	+	+	+	+	-	+	+	+	+	+	90	90
2 RYUN (R)	+	+	+	+	+	+	+	+	+	+	100	100
3 SNOWBARGER (R)	+	+	+	+	+	+	+	+	+	+	100	100
4 TIAHRT (R)	+	+	+	-	+	+	+	+	+	+	90	95
KENTUCKY												
1 WHITFIELD (R)	+	+	+	+	+	+	+	+	+	+	100	98
2 LEWIS (R)	+	-	+	-	+	+	?	+	+	+	78	86
3 NORTHUP (R)	+	+	+	+	+	+	+	+	+	+	100	100
4 BUNNING (R)	+	+	+	-	+	+	+	+	+	+	90	89
5 ROGERS (R)	+	+	+	-	+	+	+	+	+	+	90	81
6 BAESLER (D)	-	+	+	+	+	+	-	+	-	+	70	62
LOUISIANA												
1 LIVINGSTON (R)	+	+	+	+	+	+	+	+	+	+	100	88
2 JEFFERSON (D)	-	?	?	+	-	-	-	+	+	+	50	27
3 TAUZIN (R)	+	+	+	+	+	+	+	+	+	+	100	77
4 McCRERY(R)	+	+	+	+	+	+	+	+	+	+	100	95
5 COOKSEY (R)	+	+	+	+	+	+	+	+	+	+	100	100
6 BAKER (R)	+	?	+	+	+	+	+	+	+	+	100	95
7 JOHN (D)	+	+	+	+	+	+	+	+	+	+	100	100
MAINE												
1 ALLEN (D)	-	+	+	+	-	-	-	-	+	+	50	50
2 BALDACCI (D)	-	+	+	+	-	-	-	+	+	+	60	41
MARYLAND												
1 GILCHREST (R)	+	+	+	+	+	+	+	-	+	+	90	92
2 EHRLICH (R)	+	+	+	-	+	+	+	+	+	+	90	91
3 CARDIN (D)	-	+	+	-	-	-	-	-	+	+	40	28
4 WYNN (D)	-	+	+	-	-	-	-	-	+	+	40	29
5 HOYER (D)	-	+	+	-	-	-	-	+	+	-	40	25
6 BARTLETT (R)	+	+	+	-	+	+	+	+	+	+	90	94
7 CUMMINGS (D)	-	+	+	-	-	-	-	-	-	+	30	26
8 MORELLA (R)	+	+	+	+	+	+	+	-	+	+	90	60
MASSACHUSETTS												
1 OLVER (D)	-	+	-	-	-	-	-	-	+	+	30	23
2 NEAL (D)	-	+	+	+	-	-	-	-	+	+	50	27
3 McGOVERN (D)	-	+	-	+	-	-	-	-	-	+	30	30
4 FRANK (D)	-	+	-	-	-	-	-	-	+	+	30	19
5 MEEHAN (D)	-	+	+	+	-	?	-	-	-	+	44	43
6 TIERNEY (D)	-	+	-	-	-	-	-	-	-	+	20	20
7 MARKEY (D)	-	+	-	-	-	-	-	-	-	+	20	22
8 KENNEDY (D)	-	+	-	-	-	-	-	-	-	+	20	24

State	1	2	3	4	5	6	7	8	9	10	'97 %	CUM %
9 MOAKLEY (D)	-	+	-	+	-	-	-	-	-	+	30	21
10 DELAHUNT (D)	-	+	-	-	-	-	-	-	-	+	20	20
MICHIGAN												
1 STUPAK (D)	-	+	+	-	-	-	-	-	+	+	40	31
2 HOEKSTRA (R)	+	+	+	+	+	+	+	+	+	+	100	95
3 EHLERS (R)	+	+	+	+	+	+	+	-	+	+	90	93
4 CAMP (R)	+	+	+	+	+	+	+	+	+	+	100	96
5 BARCIA (D)	-	+	+	-	+	-	-	+	+	+	60	57
6 UPTON (R)	+	+	+	-	+	+	+	+	+	+	90	93
7 SMITH (R)	+	+	+	-	+	+	+	+	+	+	90	92
8 STABENOW (D)	-	+	+	+	-	-	-	-	+	+	50	50
9 KILDEE (D)	-	+	+	-	-	-	-	-	+	+	40	23
10 BONIOR (D)	-	+	+	-	-	-	-	-	+	+	40	21
11 KNOLLENBERG (R)	+	+	+	+	+	+	+	+	+	+	100	95
12 LEVIN (D)	-	+	+	+	-	-	-	-	+	+	50	28
13 RIVERS (D)	-	+	+	-	-	-	-	-	-	+	30	25
14 CONYERS (D)	-	+	-	+	-	-	-	-	-	+	30	17
15 KILPATRICK (D)	-	+	-	-	-	-	-	-	+	+	30	30
16 DINGELL (D)	-	+	+	+	-	-	-	-	+	+	50	24
MINNESOTA												
1 GUTKNECHT (R)	+	+	+	+	+	+	+	+	+	+	100	98
2 MINGE (D)	+	+	+	+	+	-	-	-	+	+	70	62
3 RAMSTAD (R)	+	+	+	+	+	+	+	-	+	+	90	87
4 VENTO (D)	-	+	+	-	-	-	-	-	+	+	40	23
5 SABO (D)	-	+	+	-	-	-	-	-	-	+	30	22
6 LUTHER (D)	-	+	+	+	+	-	-	-	+	+	60	39
7 PETERSON (D)	+	+	+	+	-	-	-	+	+	+	70	59
8 OBERSTAR (D)	-	+	-	+	-	-	-	-	+	+	40	21
MISSISSIPPI												
1 WICKER (R)	+	?	+	+	+	+	+	+	+	+	100	99
2 THOMPSON (D)	-	+	-	-	-	-	-	+	+	+	40	26
3 PICKERING (R)	+	+	+	-	+	+	+	+	+	+	90	90
4 PARKER (R)	+	+	+	-	+	+	+	+	+	+	90	86
5 TAYLOR (D)	+	-	+	-	+	+	+	+	+	+	80	66
MISSOURI												
1 CLAY (D)	-	+	-	-	-	-	-	-	-	+	20	19
2 TALENT (R)	+	-	+	+	+	+	+	+	-	+	80	92
3 GEPHARDT (D)	-	?	-	-	-	-	-	-	-	+	11	27
4 SKELTON (D)	-	?	+	+	+	+	-	+	+	+	78	52
5 McCARTHY (D)	-	+	+	+	+	-	-	-	+	+	60	41
6 DANNER (D)	-	+	+	-	+	+	-	+	+	+	70	56
7 BLUNT (R)	+	+	+	-	+	+	+	+	+	+	90	90
8 EMERSON (R)	+	-	+	+	+	+	+	+	+	+	90	90
9 HULSHOF (R)	+	-	+	+	+	+	+	+	+	+	90	90
MONTANA												
HILL (R)	+	+	-	+	+	+	-	+	+	+	80	80

PHOTO: T. MICHAEL KEZA

Rep. Chris John, D-La., right, talks with Stuart Hardy, center, senior manager of the U.S. Chamber's natural-resources policy center, and the Bunge Co.'s Charles Nelson.

State	1	2	3	4	5	6	7	8	9	10	'97 %	CUM %
NEBRASKA												
1 BEREUTER (R)	+	+	+	+	+	+	+	-	+	+	90	86
2 CHRISTENSEN (R)	+	+	+	+	+	+	+	+	+	+	100	95
3 BARRETT (R)	+	+	+	+	+	+	+	+	+	+	100	93
NEVADA												
1 ENSIGN (R)	+	+	+	-	+	+	+	+	-	+	80	89
2 GIBBONS (R)	+	+	+	-	+	+	+	+	-	+	80	80
NEW HAMPSHIRE												
1 SUNUNU (R)	+	+	+	+	+	+	+	+	+	+	100	100
2 BASS (R)	+	+	+	+	+	+	+	-	+	+	90	95
NEW JERSEY												
1 ANDREWS (D)	-	?	+	+	-	-	-	-	-	+	33	39
2 LoBIONDO (R)	-	?	+	-	+	+	-	+	+	+	67	76
3 SAXTON (R)	+	+	+	+	+	+	-	-	+	+	80	81
4 SMITH (R)	-	+	+	-	+	+	-	-	-	+	50	56
5 ROUKEMA (R)	+	+	+	+	+	+	-	-	+	+	80	74
6 PALLONE (D)	-	+	+	-	-	-	-	-	-	+	30	37
7 FRANKS (R)	+	+	+	+	+	+	-	+	+	+	90	87
8 PASCRELL (D)	-	+	+	-	-	-	-	+	-	+	40	40
9 ROTHMAN (D)	-	+	+	-	-	-	-	+	-	+	40	40
10 PAYNE (D)	-	+	-	-	-	-	-	-	-	+	20	19
11 FRELINGHUYSEN (R)	+	+	+	+	+	+	+	-	+	+	90	88
12 PAPPAS (R)	+	-	+	-	+	+	-	+	+	+	70	70
13 MENENDEZ (D)	-	+	+	-	-	-	-	-	+	+	40	30
NEW MEXICO												
1 SCHIFF (R)*	-	?	?	?	?	?	?	?	?	?	0	74
2 SKEEN (R)	+	+	+	+	+	+	+	+	+	+	100	86
3 REDMOND (R)	0	0	+	+	+	+	+	+	+	+	100	100
NEW YORK												
1 FORBES (R)	-	+	+	-	+	+	-	-	+	+	60	71
2 LAZIO (R)	+	+	+	+	+	+	-	-	+	+	80	85
3 KING (R)	-	-	-	-	-	+	-	+	+	+	40	71
4 McCARTHY (D)	-	+	+	-	-	+	-	-	+	+	50	50
5 ACKERMAN (D)	-	?	+	+	-	-	-	-	-	+	33	25
6 FLAKE (D)	-	?	+	+	-	-	-	-	+	+	44	25
7 MANTON (D)	-	?	+	+	-	-	-	-	+	+	44	27
8 NADLER (D)	-	+	-	-	-	-	-	-	-	+	20	12
9 SCHUMER (D)	-	+	+	+	-	-	-	-	-	+	40	27
10 TOWNS (D)	-	?	-	+	-	-	-	-	+	+	33	21
11 OWENS (D)	-	+	-	-	-	-	-	-	-	+	20	18
12 VELAZQUEZ (D)	-	+	-	-	-	-	-	-	-	+	20	10
13 MOLINARI (R)	+	?	+	-	+	+	0	0	0	0	80	84
14 MALONEY (D)	-	+	+	+	-	-	-	-	+	+	50	35
15 RANGEL (D)	-	+	-	+	-	-	-	-	-	+	30	18
16 SERRANO (D)	-	+	-	+	-	-	-	-	-	+	30	18
17 ENGEL (D)	-	+	-	-	-	-	-	-	+	+	30	21
18 LOWEY (D)	-	+	+	+	-	-	-	-	-	+	40	29
19 KELLY (R)	+	+	+	+	+	+	-	-	-	+	70	83
20 GILMAN (R)	-	+	+	-	+	+	-	-	+	+	60	43
21 McNULTY (D)	-	+	-	+	-	-	-	-	-	+	30	32
22 SOLOMON (R)	+	-	+	-	+	+	?	+	+	+	78	80
23 BOEHLERT (R)	-	?	+	+	+	+	-	-	+	+	67	59
24 McHUGH (R)	-	+	+	+	+	+	-	+	+	+	80	82
25 WALSH (R)	+	+	+	+	+	+	-	-	+	+	80	77
26 HINCHEY (D)	-	+	-	-	-	-	-	-	-	+	20	21
27 PAXON (R)	+	+	+	-	+	+	+	+	+	+	90	92
28 SLAUGHTER (D)	-	+	-	+	-	-	-	-	-	+	30	31
29 LaFALCE (D)	-	+	+	+	-	-	-	-	-	+	40	34
30 QUINN (R)	-	?	+	+	+	+	-	+	+	+	78	81
31 HOUGHTON (R)	+	+	+	+	+	+	-	+	+	+	90	84
NORTH CAROLINA												
1 CLAYTON (D)	-	+	+	-	-	-	-	-	+	+	40	24
2 ETHERIDGE (D)	-	+	+	+	+	-	-	+	+	+	70	70
3 JONES (R)	+	-	+	-	+	+	+	+	+	+	80	90
4 PRICE (D)	-	+	+	+	-	-	-	-	+	+	50	45
5 BURR (R)	+	+	+	-	+	+	+	+	+	+	90	91
6 COBLE (R)	+	-	+	+	+	+	+	+	+	+	90	90
7 McINTYRE (D)	+	+	+	-	+	+	-	+	+	+	80	80
8 HEFNER (D)	-	?	+	-	-	-	?	-	+	+	38	49
9 MYRICK (R)	+	+	+	-	+	+	+	+	+	+	90	93
10 BALLENGER (R)	+	?	+	+	+	+	+	+	+	+	100	94
11 TAYLOR (R)	+	+	+	+	+	+	+	+	+	+	100	88
12 WATT (D)	-	+	-	-	-	-	-	-	+	+	30	16

*Absent due to illness.

PHOTO: T. MICHAEL KEZA

U.S. Chamber Office of Congressional and Public Affairs Manager Brian Wild, right, presents the Chamber's legislative priorities to Rep. Wally Herger, R-Calif.

State	1	2	3	4	5	6	7	8	9	10	'97 %	CUM %
NORTH DAKOTA												
POMEROY (D)	-	+	+	+	+	-	-	-	+	+	60	46
OHIO												
1 CHABOT (R)	+	+	+	+	+	+	+	+	+	+	100	95
2 PORTMAN (R)	+	+	+	+	+	+	+	-	+	+	90	95
3 HALL (D)	-	+	+	-	+	-	-	+	-	+	50	34
4 OXLEY (R)	+	+	+	+	+	+	+	+	+	+	100	93
5 GILLMOR (R)	+	?	+	-	+	+	+	+	+	+	89	84
6 STRICKLAND (D)	-	+	+	-	-	-	-	?	+	+	44	32
7 HOBSON (R)	+	+	+	-	+	+	+	+	+	+	90	88
8 BOEHNER (R)	+	+	+	+	+	+	+	+	+	+	100	93
9 KAPTUR (D)	?	+	-	-	-	-	-	-	-	+	22	30
10 KUCINICH (D)	-	+	-	-	-	-	-	-	-	+	20	20
11 STOKES (D)	-	+	-	-	-	-	-	-	-	+	20	19
12 KASICH (R)	+	+	+	-	+	+	+	+	-	+	80	89
13 BROWN (D)	-	?	-	-	-	-	-	-	+	+	22	32
14 SAWYER (D)	-	+	+	+	-	-	-	-	+	+	50	32
15 PRYCE (R)	+	+	+	+	+	+	+	+	+	+	100	95
16 REGULA (R)	+	+	+	+	+	+	-	+	+	+	90	76
17 TRAFICANT (D)	-	+	-	-	+	+	-	+	+	+	60	35
18 NEY (R)	+	+	+	+	+	+	-	+	-	+	80	85
19 LaTOURETTE (R)	+	+	+	+	+	+	-	+	+	+	90	91
OKLAHOMA												
1 LARGENT (R)	+	+	-	+	+	+	+	+	+	+	90	92
2 COBURN (R)	+	+	-	-	+	+	+	+	?	+	78	85
3 WATKINS (R)	+	?	+	+	+	+	+	+	-	+	89	56
4 WATTS (R)	+	?	+	-	+	+	+	+	+	+	89	96
5 ISTOOK (R)	+	?	-	+	+	+	+	+	+	+	89	92
6 LUCAS (R)	+	+	+	+	+	+	+	+	-	+	90	95
OREGON												
1 FURSE (D)	-	+	+	+	-	-	-	-	-	+	40	38
2 SMITH (R)	+	+	+	+	+	+	+	+	+	+	100	91
3 BLUMENAUER (D)	-	+	-	+	-	-	-	+	-	+	40	30
4 DeFAZIO (D)	-	+	-	-	-	-	-	-	-	+	20	29
5 HOOLEY (D)	-	+	+	+	+	-	-	-	-	+	50	50
PENNSYLVANIA												
1 FOGLIETTA (D)	-	+	+	+	-	-	-	-	-	+	40	22
2 FATTAH (D)	-	+	+	+	-	-	-	-	+	+	50	29
3 BORSKI (D)	-	+	-	-	-	-	-	-	+	+	30	26
4 KLINK (D)	-	?	+	-	-	-	-	-	+	+	33	29
5 PETERSON (R)	+	+	+	+	+	+	+	+	+	+	100	100
6 HOLDEN (D)	-	+	+	+	+	-	-	+	+	+	70	53
7 WELDON (R)	+	+	+	+	+	+	-	+	?	+	89	77
8 GREENWOOD (R)	+	+	+	+	+	+	+	-	+	+	90	90
9 SHUSTER (R)	+	+	-	+	+	+	+	+	+	+	90	87
10 McDADE (R)	-	+	+	+	+	+	-	+	+	+	80	54
11 KANJORSKI (D)	-	+	-	+	-	-	-	-	+	+	40	28
12 MURTHA (D)	-	?	+	+	-	-	-	+	+	+	56	34
13 FOX (R)	+	+	+	+	+	+	-	+	+	+	90	85

6. Tax-Relief Act (H.R. 2014)

The House approved 253-179 the Taxpayer Relief Act. The legislation called for a net tax reduction of $85 billion over five years.

The Senate passed a slightly different tax-cut package, and the president signed into law a House-Senate compromise tax bill.

The House package included a repeal of the alternative minimum tax for corporations with average annual gross receipts of less than $5 million and a reduction in the corporate capital-gains tax rate.

It included provisions to expand the home-office deduction and to clarify rules for determining whether a worker is an employee or an independent contractor.

The maximum corporate capital-gains tax rate, now 35 percent, would have been reduced to 32 percent in 1998, to 31 percent in 1999, and to 30 percent thereafter for certain assets held at least eight years. The top capital-gains rate for individuals would have been cut to 20 percent from 28 percent. Additionally, certain assets held for more than three years could have been indexed for inflation beginning in 2001.

Among other things, the House version would have:

■ Increased the exemption for estate taxes from its current $600,000 to $1 million by 2007. Thereafter, the exemption would be indexed for inflation.

■ Allowed employers to give workers up to $5,250 in tax-exempt education benefits. The bill would have reinstated the employer-provided education-assistance exclusion retroactive to May 31, 1997, and would have extended it to Dec. 31, 1997.

■ Reinstated retroactively the research-and-experimentation tax credit—which expired May 31, 1997—through 1998.

■ Extended a waiver period for penalties on businesses that fail to comply with a requirement that they deposit federal payroll taxes electronically. The Internal Revenue Service waived the penalty through Dec. 31, 1997. The bill would have extended the waiver period through Dec. 31, 1998.

■ Established a $400 tax credit for each child under age 17 in 1998, and a $500 credit thereafter.

■ Granted an education tax credit that would cover as much as 50 percent of the first $3,000 of tuition and fees for each of the first two years of postsecondary education.

The Chamber supported the tax-cut bill because it would have benefited families and businesses by encouraging economic growth, providing increased access to capital for new investments, and returning money to the pockets of American taxpayers.

7. Davis-Bacon Act Reform

The House passed 234-188 an amendment that disallows waivers to the federal prevailing-wage law for work done on public schools in the District of Columbia. The amendment struck a provision in the fiscal 1998 appropriations bill for the District of Columbia that would have permitted waivers of the Davis-Bacon Act.

The law requires contractors on federally funded construction projects valued at $2,000 or more to pay workers the local prevailing wage, which usually means union wage.

The Chamber opposed the amendment to the funding bill because it retained the Davis-Bacon law for D.C. school construction and thus will divert limited dollars for books and supplies for the city's students and teachers to the unions through inflated wages.

A study by the economics department at Oregon State University found that the Davis-Bacon Act inflates the cost of construction and repair projects by 26 to 38 percent.

State	1	2	3	4	5	6	7	8	9	10	'97 %	CUM %
14 COYNE (D)	-	+	-	-	-	-	-	-	-	+	20	21
15 McHALE (D)	-	+	+	+	+	-	-	-	-	+	50	50
16 PITTS (R)	+	+	+	+	+	+	+	+	+	+	100	100
17 GEKAS (R)	+	+	+	+	+	+	+	+	+	+	100	90
18 DOYLE (D)	-	+	+	+	+	-	-	+	+	+	70	55
19 GOODLING (R)	+	+	+	-	+	+	+	+	+	+	90	79
20 MASCARA (D)	-	+	+	-	-	-	-	+	+	+	50	43
21 ENGLISH (R)	-	+	+	+	+	+	-	+	-	+	70	83
RHODE ISLAND												
1 KENNEDY (D)	-	+	-	-	-	-	-	-	-	+	20	19
2 WEYGAND (D)	-	+	-	-	-	-	-	+	-	+	30	30
SOUTH CAROLINA												
1 SANFORD (R)	+	-	-	-	+	+	+	-	+	+	60	78
2 SPENCE (R)	+	+	+	-	+	+	+	+	+	+	90	85
3 GRAHAM (R)	+	+	+	-	+	+	+	+	+	+	90	95
4 INGLIS (R)	+	+	+	-	+	+	+	+	+	+	90	84
5 SPRATT (D)	-	+	+	-	+	-	-	-	+	+	50	48
6 CLYBURN (D)	-	+	-	-	-	-	-	-	+	+	30	31
SOUTH DAKOTA												
THUNE (R)	+	-	+	+	+	+	+	+	+	+	90	90
TENNESSEE												
1 JENKINS (R)	+	+	+	+	+	+	+	+	+	+	100	100
2 DUNCAN (R)	+	-	+	-	+	+	+	+	+	+	80	81
3 WAMP (R)	+	-	+	-	+	+	+	+	+	+	80	88
4 HILLEARY (R)	+	+	+	-	+	+	+	+	+	+	90	95
5 CLEMENT (D)	-	+	+	+	+	+	-	+	+	+	80	54
6 GORDON (D)	-	+	+	-	+	+	-	+	+	+	70	46
7 BRYANT (R)	+	+	+	+	+	+	+	+	+	+	100	100
8 TANNER (D)	+	+	+	+	+	-	-	+	+	+	80	62
9 FORD (D)	-	+	+	+	-	-	-	+	+	+	60	60

8. Private-Property Rights (H.R. 1534)

The House passed 248-178 legislation that sets guidelines for private-property owners to challenge in federal courts the designations of their lands as endangered- or threatened-species habitats or wetlands.

The measure, known as the Private Property Rights Implementation Act, would allow a landowner who has first tried to resolve differences over the use of his or her property with local, state, or federal regulating agencies to appeal land-use decisions to the federal courts.

The Senate did not vote on a property-rights bill in 1997 but may consider a measure in 1998.

The Chamber backed the land-rights bill as a better way for small-business and private-property owners to challenge certain environmental designations of their lands, which often limit or ban the use of private property.

9. Nuclear-Waste Storage (H.R. 1270)

The House approved 307-120 the Nuclear Waste Policy Act to establish an interim storage facility in the Nevada desert for used fuel from nuclear power plants. The bill provides for the development of an integrated nuclear-waste management system and a transportation network to move spent nuclear fuel rods to the storage site.

The Senate passed a similar measure; a House-Senate compromise bill is expected to be approved in 1998.

The Chamber supported the legislation, which is particularly important to businesses because they are among the largest

Rep. Kay Granger, R-Texas, and Bruce Josten, center, the U.S. Chamber's executive vice president for government affairs, listen as Rep. John E. Sununu, R-N.H., discusses efforts by the freshman class to advance pro-business legislation during a meeting at the Chamber.

State	1	2	3	4	5	6	7	8	9	10	'97 %	CUM %
TEXAS												
1 SANDLIN (D)	-	+	+	+	-	+	-	+	+	+	70	70
2 TURNER (D)	-	+	+	+	+	+	-	+	+	+	80	80
3 JOHNSON, S. (R)	+	+	+	+	+	+	+	+	+	+	100	95
4 HALL (D)	+	-	+	+	-	+	+	+	+	+	80	75
5 SESSIONS (R)	+	-	+	+	+	+	+	+	+	+	90	90
6 BARTON (R)	+	?	-	-	+	+	+	+	+	+	78	90
7 ARCHER (R)	+	+	+	+	+	+	+	+	+	+	100	92
8 BRADY (R)	+	+	+	+	+	+	+	+	+	+	100	100
9 LAMPSON (D)	-	+	+	+	+	-	-	-	-	+	50	50
10 DOGGETT (D)	-	+	+	+	-	-	-	-	-	+	40	29
11 EDWARDS (D)	-	+	+	+	+	-	-	+	+	+	70	61
12 GRANGER (R)	+	+	+	+	+	+	+	+	+	+	100	100
13 THORNBERRY (R)	+	+	+	+	+	+	+	+	+	+	100	98
14 PAUL (R)	+	-	-	+	-	+	+	+	-	+	60	73
15 HINOJOSA (D)	-	+	+	+	-	-	-	+	+	+	60	60
16 REYES (D)	-	+	+	+	-	-	-	-	-	+	40	40
17 STENHOLM (D)	+	+	+	+	+	-	+	+	+	+	90	79
18 JACKSON-LEE (D)	-	+	-	+	-	-	-	?	+	+	44	31
19 COMBEST (R)	+	+	+	+	+	+	+	+	+	+	100	92
20 GONZALEZ (D)	-	+	+	-	-	-	?	?	?	?	33	24
21 SMITH (R)	+	+	+	+	+	+	+	+	+	+	100	92
22 DeLAY (R)	+	+	+	+	+	+	+	+	+	+	100	93
23 BONILLA (R)	+	+	+	+	+	+	+	+	-	+	90	97
24 FROST (D)	-	+	+	+	-	-	-	+	+	+	60	38
25 BENTSEN (D)	-	+	+	+	+	-	-	-	+	+	60	40
26 ARMEY (R)	+	+	+	+	+	+	+	+	+	+	100	96
27 ORTIZ (D)	-	+	+	+	-	-	-	+	+	+	60	40
28 RODRIGUEZ (D)	0	+	+	+	-	-	-	-	+	+	56	56
29 GREEN (D)	-	+	+	+	-	-	-	+	+	+	60	41
30 JOHNSON, E. B. (D)	-	+	-	+	-	-	-	-	+	+	40	28
UTAH												
1 HANSEN (R)	+	+	+	+	+	+	+	+	-	+	90	92
2 COOK (R)	+	-	+	-	+	+	+	+	+	+	80	80
3 CANNON (R)	+	-	+	+	+	+	+	+	+	+	90	90
VERMONT												
SANDERS (I)	-	+	-	-	-	-	-	-	-	+	20	16
VIRGINIA												
1 BATEMAN (R)	+	+	+	+	+	+	+	+	+	+	100	87
2 PICKETT (D)	+	+	+	+	-	+	-	+	+	+	80	64
3 SCOTT (D)	-	+	-	-	-	-	-	+	+	+	40	29
4 SISISKY (D)	-	+	+	-	+	+	-	+	+	+	70	53
5 GOODE (D)	+	-	+	-	+	+	+	+	+	+	80	80
6 GOODLATTE (R)	+	+	+	+	+	+	+	+	+	+	100	96
7 BLILEY (R)	+	+	+	+	+	+	+	+	+	+	100	94
8 MORAN (D)	-	+	+	+	+	-	-	-	-	+	50	42
9 BOUCHER (D)	-	+	-	+	-	-	-	-	+	+	40	33
10 WOLF (R)	+	+	+	-	+	+	+	+	+	+	90	81
11 DAVIS (R)	+	+	+	+	+	+	+	+	+	+	100	94
WASHINGTON												
1 WHITE (R)	+	+	+	+	+	+	+	+	+	+	100	96
2 METCALF (R)	-	-	+	+	-	+	-	+	+	+	60	76
3 SMITH, L. (R)	+	-	+	-	+	+	-	+	+	+	70	83
4 HASTINGS (R)	+	+	+	+	+	+	?	+	+	+	100	100
5 NETHERCUTT (R)	+	+	+	+	+	+	+	+	+	+	100	98
6 DICKS (D)	-	+	+	+	-	+	-	-	+	+	60	35
7 McDERMOTT (D)	-	+	-	+	-	-	-	-	-	-	20	23
8 DUNN (R)	+	+	+	+	+	+	+	+	+	+	100	98
9 SMITH, A. (D)	-	+	+	+	+	-	-	-	-	+	50	50
WEST VIRGINIA												
1 MOLLOHAN (D)	-	+	-	-	-	-	-	-	+	+	30	27
2 WISE (D)	-	+	+	+	-	-	-	-	-	+	40	26
3 RAHALL (D)	-	+	-	-	-	-	-	-	-	+	20	28
WISCONSIN												
1 NEUMANN (R)	+	-	+	+	+	+	+	+	+	+	90	86
2 KLUG (R)	+	+	-	-	+	+	+	-	+	+	70	76
3 KIND (D)	-	+	+	+	-	-	-	-	+	+	50	50
4 KLECZKA (D)	-	+	+	+	+	-	-	-	-	+	50	32
5 BARRETT (D)	-	+	+	+	-	-	-	-	-	+	40	36
6 PETRI (R)	+	-	+	+	+	+	-	+	+	+	80	77
7 OBEY (D)	-	+	-	-	-	-	-	-	+	+	30	21
8 JOHNSON (D)	-	+	+	+	-	-	-	-	+	+	50	50
9 SENSENBRENNER (R)	+	-	+	-	+	+	+	+	+	+	80	81
WYOMING												
CUBIN (R)	+	+	-	-	+	+	+	?	?	?	71	90

PHOTO: LAURENCE L. LEVIN

Tina Tabb, manager of the U.S. Chamber's Office of Congressional and Public Affairs, reviews the Chamber's annual vote ratings with Rep. James V. Hansen, R-Utah.

users of electricity. Virtually all electric utilities sell electricity generated at nuclear power plants.

Those plants—81 in 34 states—are rapidly running out of storage space for used fuel rods. With no central storage site, utilities would have to spend $7 billion to $8 billion collectively, according to various cost estimates, to expand on-site storage for nuclear waste. The expectation is that those costs would be passed on to consumers, who already have paid $13 billion into a fund to finance a central storage facility.

Also, failure to designate a central storage site, said the Chamber, could jeopardize nuclear safety and would force plants that reach storage capacity to shut down.

10. IRS Restructuring (H.R. 2676)

The House passed 426-4 the Internal Revenue Service Restructuring and Reform Act to overhaul the tax-collection agency.

The measure would shift the burden of proof in judicial tax proceedings from the taxpayer to the IRS and would allow taxpayers to recover damages of up to $100,000 if a federal court ruled that the IRS violated the law recklessly and intentionally or engaged in unauthorized, improper, or erroneous collection actions.

Also, the bill would make it easier for taxpayers to recover legal fees incurred in litigating disputes with the IRS and would give the agency's existing taxpayer advocate more power to speak for taxpayers and take actions on their behalf.

The legislation, which includes many of the recommendations from a national commission on reforming the IRS, would create an independent board to oversee the agency. A majority of the board's members, appointed by the president and confirmed by the Senate, would be from the private sector. The legislation also calls for funding to improve IRS customer service.

The Senate is expected to consider a similar measure in 1998.

The Chamber supported the bill as a means to address many of the inherent inefficiencies within the IRS and to make the agency more accountable to the American public.

■ Legislation

Hill To Weigh Diverse Issues

Continued From Page 1A

to the Chamber, Taylor was a senior lobbyist in the Bush administration and worked for several members of Congress.

Before joining the Chamber staff, Loon was legislative director for Sen. Arlen Specter, R-Pa. Wild was legislative assistant for former Sen. Hank Brown, R-Colo. Tabb worked in the regional-development office of the Organization of American States. Kaleta worked for Rep. Thomas J. Bliley Jr., R-Va.

The new lobbyists and their previous positions are Cecelia Adams, vice president of tax and budget policy for the International Mass Retail Association; Randy Johnson, workplace coordinator for the House Education and Workforce Committee; Bill Morley, general counsel to Sen. Specter; J.T. Taylor, chief of staff to Rep. Sue Myrick, R-N.C.; and Joe Theissen, senior policy director for Rep. Collin Peterson, D-Minn.

"The Chamber's primary mission is to win legislative victories for business on Capitol Hill," says Thomas J. Donohue, the organization's president and CEO. "We are substantially increasing our presence on Capitol Hill with lobbyists of outstanding skill and breadth."

Congress reconvenes Jan. 27.

Among the issues on which the Chamber will lobby early this year are:

Fast-Track Trade-Negotiating Authority

Lawmakers in both houses are expected to vote on a measure that would allow the president to negotiate with other countries on trade agreements that would be subject only to up-or-down votes of Congress. Such pacts could not be amended. The Chamber supports fast-track authority.

IRS Restructuring

The Senate is expected to act on a measure that would shift the burden of proof in judicial tax proceedings from the taxpayer to the IRS and would allow taxpayers to recover damages if a federal court ruled that the IRS recklessly and intentionally violated the law or engaged in unauthorized, improper, or erroneous collection actions.

It also would make it easier for taxpayers to recover legal fees incurred in litigating disputes with the IRS, and it would give the agency's existing taxpayer advocate more power to speak for taxpayers and take actions on their behalf.

The legislation, which the Chamber backs and which the House has already approved, would create an independent board to oversee the IRS. A majority of the board's members, appointed by the president and confirmed by the Senate, would come from the private sector.

The measure also calls for funding for the IRS to improve customer service.

Compensatory Time Off

The Senate is expected to consider legislation that would allow employers to offer workers time off from their jobs in lieu of overtime pay. Hourly employees would be given the option of taking compensatory time for hours worked over 40 in a week. Workers would accrue comp-time leave at the rate of 1.5 hours for each hour of overtime worked.

The House has approved such a bill, which the Chamber strongly supports.

ISTEA Reauthorization

Congress passed in late 1997 only a short-term extension of the federal law—the Intermodal Surface Transportation Efficiency Act—that funds the nation's largest road, bridge, and mass-transit construction and repairs.

The extension expires in March, and lawmakers in both houses want to approve a multiyear bill. The Chamber backs a multiyear reauthorization of ISTEA.

MFN Status For China

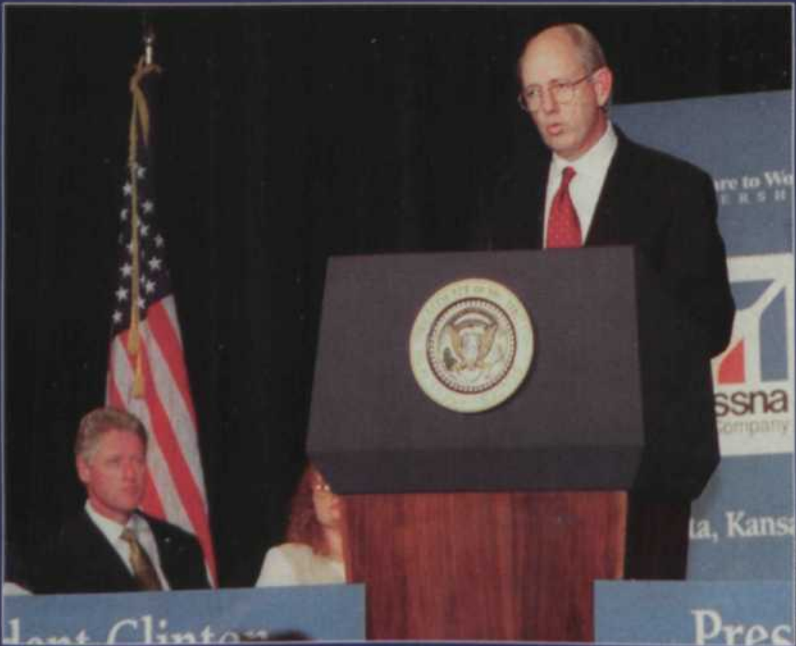
Lawmakers in both houses likely will try to kill the president's expected renewal of most-favored-nation trade status for China.

MFN status is routinely granted to most of the nations with which the United States trades. It confers no special trade privileges but simply allows a foreign country's products to enter the United States at normal tariff rates. The Chamber supports extension of MFN to China.

Mandates Information Act

The House and the Senate are expected to take up legislation that would allow lawmakers to block consideration of any proposed federal mandate that would exceed \$100 million in annual costs to the private sector. The bills also would require the Congressional Budget Office to estimate the impact of private-sector mandates on consumer prices, workers' wages and employment opportunities, and small-business hiring, expansion, and profitability. The Chamber strongly supports the bills.

■ Welfare-To-Work Effort



1997-98 U.S. Chamber Chairman Michael S. Starnes urged the business federation's 3,000 state and local chambers to become involved in a nationwide effort to move people off welfare rolls into jobs. Starnes, who is chairman, president, and CEO of M.S. Carriers, a Memphis, Tenn., trucking firm, joined President Clinton at a Cessna aircraft plant in Kansas in November in support of the Welfare to Work Partnership, an organization of companies and business groups that provides assistance to firms that seek to hire and to retain welfare recipients.